1010.

SUPREME COURT OF THE UNITED STATES.

No. 164.

DAVID A. SECOMBE AND AL., PL'FFS IN ERROR,

vs.

FRANKLIN STEELE.

IN ERROR TO THE SUPREME COURT OF THE TERRITORY OF MINNESOTA.

INDEX.

	Original.	Print.
Writ of error	1	1
Citation and service	3	1
Proceedings in district court	6	2
Writ of summons and sheriff's return	8	2, 3
Complaint of plaintiff	10	4
Exhibits referred to	30	10
Map	30	10
Answer of defendant Secombe	59	21
" Sounsend	69	23
" Garland	75	26
" Rollins	82	28
" Lawrence	90	31
" Jones	98	34
" Farnham & Stimson	108	37
" La Croix	118	41
" King	124	43
" Estes	130	46
" Parker	139	49
" Cole	147	52
" Stoughton	154	54
" McCann	161	57
" Nash	166	59
" Dutton	174	62
Demurrer to answer of Secombe	182	65
Stipulation of counsel	183	65

GIDEON, Print.

	Original.	Print.
Abstract of pleadings and opinion of court upon demurrer of plaintiff	185	66
Answer of defendant Secombe	200	71
Copies of papers certified and returned by the district court to answer of Secombe	215	77
Stipulations of parties	351	131
Notice of motion to strike out portions of amended answer	353	131
Demurrer to portions of amended answer	367	137
Stipulation of counsel	372	139
Order on motion to strike out	374	139
Decree of district court	376	140
Opinion of district court	389	144
Notice to plaintiff's counsel	394	147
Motion to open judgment, and for leave to file further amended answer	396	147
Motion denied	397	148
Notice of appeal	398	148
Clerk's certificate	400	148
Proceedings in supreme court	401	149
Certificate of clerk of "	402	149
Points and authorities of respondent	403	149
" of appellants	408	151
Decree of supreme court	416	154
" for costs	417	154
Clerk's certificate	418	155
Motion for continuance, and affidavits	419	155

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the Judges of the Supreme Court in and for the Territory of Minnesota, greeting:

Because in the record and proceedings, as also in the rendition of a final judgment in an action which is in the said supreme court, before you, between Franklin Steele, plaintiff and respondent, and David A. Secombe, Sumner W. Farnham, Charles F. Stimson, John Rollins, Eli C. Jones, Benjamin Parker, Orville W. Stoughton, E. F. King, Moses W. Getchell, G. B. Dutton, Samuel Estes, and J. La Croix, defendants and appellants, said action being on appeal from the United States district court in and for the second judicial district of said Territory, a manifest error hath happened, to the great damage of the said David A. Secombe, Sumner W. Farnham, Charles F. Stimson, John Rollins, Eli C. Jones, Benjamin Parker, Orville W. Stoughton, E. F. King, Moses W. Getchell, G. B. Dutton, Samuel Estes, and J. La Croix, as by their complaint appears; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court of the United States, this thirteenth day of February, in the year of our Lord one thousand eight hundred and fifty-six, and of the independence of the United States the eightieth.

[SEAL.]

GEORGE W. PRESCOTT,
Clerk of the Supreme Court of said Territory of Minnesota.

Citation to Defendant in Error.

UNITED STATES OF AMERICA, *ss:*

To Franklin Steele, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the first Monday in December next, pursuant to a writ of error filed in the clerk's office of the United States Supreme Court in and for the Terri-

tory of Minnesota, wherein David A. Secombe, Sumner W. Farnham, Charles F. Stimson, John Rollins, Eli C. Jones, Benjamin Parker, Orville W. Stoughton, E. F. King, Moses W. Getchell, G. B. Dutton, Samuel Estes, and J. La Croix, are plaintiffs, and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the honorable Moses Sherborne, associate justice of the said United States Supreme Court in and for the Territory of Minnesota, this 13th day of February, in the year of our Lord one thousand eight hundred and fifty-six.

M. SHERBURNE,
Judge.

To the Hon. Judges of the Supreme Court of the United States:

The return to this writ appears by the schedule thereto annexed.

The answer of the justices of the supreme court of Minnesota Territory within mentioned.

[SEAL.] GEORGE W. PRESCOTT,
Clerk.

TERRITORY OF MINNESOTA,
District Court, second judicial district, county of Ramsey.

FRANKLIN STEELE, Plaintiff,
against
JAMES H. TRADER, ORRIN W. RICE, JOHN W. NORTH, J. Ryan, William L. Larned, Roswell P. Russell, William H. Cole, James B. Gilbert, Charles F. Stinson, Sumner W. Farnham, Benjamin Parker, Z. E. B. Nash, Samuel Estes, John Rollins, E. Snell, W. D. Gardiner, J. M. Durnam, Elenor King, Wm. R. Marshall, John Orth, James McCain, Charles F. Stearns, Herman Jenkins, jr., Edward Dickson, Henry S. Plummer, E. Lippencott, M. P. Wilson, J. C. Lawrence, Richard S. Rust, Charles Brown, William A. Cheever, Rufus Ingersoll, Wm. Hanson, William D. Garland, George L. Larnis, W. H. Townsend, J. La Croix, Abigail B. Fish, William G. Develin, George B. Dutton, Moses W. Getchell, Moses Munson, Charlotte Brown, Orville W. Stoughton, Jonathan Estes, Samuel L. Getchell, C. M. Jenkins, Eli C. Jones, G. E. H. Day, E. W. Merrill, S. M. Tracy, Joel Munson, John Richardson, and David (or Daniel) A. Secombe, defendants.

To the above-named defendants:

You and each of you are hereby summoned and required to answer the complaint in this action, filed in the office of the clerk of said court, and to serve a copy of your answer to the said complaint on the sub-

scribers at their office in the city of St. Paul, within twenty days after the service of this summons upon you, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiff in this action will apply to the court for the relief demanded therein.

Dated St. Paul, June 8th, 1854.

RICE, HOLLINSHEAD & BECKER,
Attorneys for Plaintiff.

TERRITORY OF MINNESOTA,
County of Ramsey, ss:

I hereby certify that I served the within summons on the following named persons, by delivering to them respectively certified copies thereof at the dates following, viz:

On R. P. Russell, John Rollins, John Orth, Samuel Estes, Mary P. Wilson, J. C. Lawrence, E. Lippencott, Edward Dixon, E. C. Jones, M. W. Getchell, —— La Croix, J. H. Trader, on the 16th day of June, 1855.

On Z. E. B. Nash, J. B. Gilbert, C. T. Stearns, C. F. Stimpson, W. A. Cheever, W. D. Garland, S. M. Tracy, W. H. Townsend, William Hanson, —— Dutton, W. L. Larned, Mrs. A. King, Jonathan Estes, on the 17th day of June, 1855; on O. W. Stoughton, W. H. Cole, S. W. Farnham, Benjamin Parker, J. McCain, J. W. North, and D. A. Secombe, on the 19th day of June, 1855.

A. M. FRIDLEY,
Sheriff of Ramsey county.

My fees $56 10.

The foregoing endorsed: "Territory of Minnesota, district court, 2d dist., county of Ramsey—Franklin Steele ag't James H. Trader and others—Summons—Filed May 31st, 1855—Geo. W. Prescott, clerk—Rice, Hollinshead & Becker, att'ys for pl'ff."

TERRITORY OF MINNESOTA,
Dist. Court, 2d dist., county of Ramsey, ss:

I, George W. Prescott, clerk of the above-entitled court, hereby certify that the foregoing is a true copy of the original summons, endorsed as hereon endorsed, which is on file in the cause therein entitled in said clerk's office.

[L. S.] In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this 7th day of January, 1856.

GEORGE W. PRESCOTT, *Clerk.*

TERRITORY OF MINNESOTA,
District court, second judicial district, county of Ramsey:

FRANKLIN STEELE, plaintiff,
against
JAMES H. TRADER, ORRIN W. RICE, JOHN W. NORTH, J. Ryan, William L. Larned, Roswell P. Russell, William H. Cole, James B. Gilbert, Charles F. Stinson, Sumner W. Farnham, Benjamin Parker, Z. E. B. Nash, Samuel Estes, John Rollins, E. Snell, W. D. Gardner, J. M. Douman, Eleanor King, William R. Marshall, John Orth, James M'Cain, Charles F. Stearns, Herman Jenkins, jr., Edward Dickson, Henry S. Plummer, E. Lippencott, M. P. Wilson, J. C. Lawrence, Richard S. Rust, Charles Brown, William A. Cheever, Rufus Ingersoll, William Hanson, D. A. Secombe, William D. Garland, George L. Lanios, W. H. Townsend, J. La Croix, Abigail B. Fish, William G. Develin, George B. Dutton, Moses W. Getchell, Moses Munson, Charlotte Brown, Orville W. Stoughton, Jonathan Estes, Samuel L. Getchell, C. M. Jenkins, Eli C. Jones, George E. H. Day, E. W. Merrill, S. M. Tracy, Joel Munson, and John Richardson.

The complaint of Franklin Steele, the plaintiff in the above entitled action, respectfully shows to this court: That on the twenty-fourth day of March, in the year one thousand eight hundred and forty-nine, by patent duly executed and issued on that day by the President of the United States, recorded in the General Land Office of the United States at the city of Washington, in vol. 1, page 25, the United States granted unto the plaintiff and to his heirs, the east half of the north-east quarter of section twenty-three in township twenty-nine north, of range twenty-four west, in the district of lands subject to sale at the Falls of St. Croix, Wisconsin, containing eighty acres, with the appurtenances thereunto belonging. That on the said twenty-fourth day of March, in the year one thousand eight hundred and forty-nine, by a certain other patent, duly executed and issued on that day by the President of the United States, recorded in the said General Land Office, in volume 1, page 26, the United States granted unto the plaintiff and to his heirs the northwest quarter of the northeast quarter, and lot number three of section twenty-three, in township twenty-nine north, of range twenty-four west, in the district of lands subject to sale at the Falls of St. Croix, Wisconsin, containing eighty-one acres and forty-hundredths of an acre, with the appurtenances thereunto belonging. That on said twenty-fourth day of March, in the year one thousand eight hundred and forty-nine, by a certain patent duly executed and issued on that day by the President of the United States, recorded in

the said General Land Office, in volume 1, page 27, the United States granted unto the plaintiff and to his heirs, lots numbered one and two of section twenty-three in township twenty-nine north, of range twenty-four west, in the district of lands subject to sale at the Falls of St. Croix, Wisconsin, containing eighty acres and twenty-eight hundredths of an acre, with the appurtenances thereunto belonging. That on the said twenty-fourth day of March, in the year one thousand eight hundred and forty-nine, by a certain other patent, duly executed and issued on that day by the President of the United States, recorded in the said General Land Office, in vol. 1, page 31, the United States granted unto the plaintiff and to his heirs, lot numbered one of section twenty-four, in township twenty-nine north, of range twenty-four west, in the district of lands subject to sale at the Falls of St. Croix, Wisconsin, containing fifty acres and seventy-eight hundredths of an acre, with the appurtenances thereunto belonging.

That on the said twenty-fourth day of March, in the year one thousand eight hundred and forty-nine, by a certain other patent, duly executed and issued on that day by the President of the United States, recorded in the said General Land Office, in vol. 1, page 28, the United States granted unto the plaintiff and to his heirs, lot number four of section twenty-three, in township twenty-nine north, of range twenty-four west, in the district of lands subject to sale at the Falls of St. Croix, Wisconsin, containing thirty-nine acres and seventy hundredths of an acre, with the appurtenances thereunto belonging.

That on the eighteenth day of July, in the year one thousand eight hundred and forty-nine, Henry H. Sibley and Sarah J., his wife, by indenture duly executed, acknowledged and delivered by them on that day, recorded in the office of register of deeds in and for the county of St. Croix and Territory of Minnesota, in book "B" of deeds, pages 330, 331 and 332, granted and conveyed unto the plaintiff, and to his heirs and assigns, all the following described piece or parcel of land, situate in the county of St. Croix aforesaid, and known and designated as follows, viz: Commencing at a point on the west line of section twenty-four of township twenty-nine north, of range twenty-four west, of the fourth principal meridian, thirteen chains and thirty-three links south from the north line of said section; thence running south fifty-five degrees forty minutes, east forty-eight chains through the northwest quarter of said section to the southeast corner of said quarter section; thence west, along the quarter section line to the west line of said section; thence north, along the said west line to the place of beginning, containing fifty-three acres and thirty-three hundredths of an acre, with the appurtenances thereunto belonging.

That on the nineteenth day of July, in the year one thousand eight hundred and forty-nine, Calvin A. Tuttle and Charlotte M. his wife, by indenture duly executed, acknowledged and delivered by them on that day, recorded in the office of the register of deeds in and for the county of St. Croix, and Territory of Minnesota, in book "B" of deeds, in pages 334, 335 and 336, granted and conveyed unto the plain-

tiff, and to his heirs and assigns, all the following described piece or parcel of land, situate, lying, and being in the county of St. Croix aforesaid, and known and designated as follows, viz: being all that portion of the northeast quarter of the southwest quarter, and lot number two of section twenty-four, of township twenty-nine north, of range twenty-four west, of the fourth principal meridian, lying north and west of a line commencing at a post on the river bluff, from which the quarter post, between sections twenty-three and twenty-four, bears north thirty-seven degrees forty minutes west, distant thirty-three chains thirteen links; thence running north thirty-seven degrees, east thirty-two chains and fifty-four links, to the centre of section number twenty-four, containing twenty-six acres and thirty-seven hundredths of an acre, be the same more or less, with the appurtenances thereunto belonging.

And the complaint of the plaintiff further respectfully shows to this court, that on the twenty-first day of March, in the year one thousand eight hundred and forty-nine, by deed duly executed and acknowledged on that day, recorded in the office of the register of deeds in and for the county of St. Croix, and Territory of Minnesota aforesaid, in book "B" of deeds, pages 160 and 161, the plaintiff and Annie E. Steele, his wife, granted and conveyed unto Arnold W. Taylor and to his heirs and assigns, one undivided half part of the mills and mill property at the falls of St. Anthony, in the county of St. Croix, now Minnesota Territory, including the water privileges at the falls aforesaid, described as follows: bounded south by the land of Calvin Tuttle, east by the land of Stephen Angel and others, north by the land of R. P. Russell, and west by the Mississippi river; also the upper or Bottineau's island, the water privileges on the east side of the middle island, and so much of the lower end of the last mentioned island as may be necessary to secure said entire water privileges, and the entire lower island, all said islands being at the falls of St. Anthony aforesaid, with the right and privilege of raising the same four feet above its present height.

That on the 7th day of July, one thousand eight hundred and forty-nine, the plaintiff, and Annie E. Steele, his wife, by indenture duly executed and acknowledged on that day, recorded in the office of the register of deeds in and for the county of St. Croix, and Territory of Minnesota, in book "C" of deeds, pages 18 and 19, granted and conveyed unto the said Arnold W. Taylor, and to his heirs and assigns, the undivided one half of the piece or parcel of land described as follows: commencing at a point on the west line of section twenty-four, of township twenty-nine north, of range twenty-four west, of the fourth principal meridian, thirteen chains and thirty-three links, south from the north line of said section, thence running south fifty-five degrees and forty minutes east, forty-eight chains, through the northwest quarter of said section, to the southeast corner of said quarter section; thence west along the quarter section line to the west line of said section; thence north along said west line to the place of beginning, containing fifty-three acres and thirty-three hundredths of an acre, with the appurtenances thereunto belonging.

1014

That on the 8th day of July, in the year one thousand eight hundred and forty-nine, the plaintiff and Annie E. Steele, his wife, by indenture duly executed and acknowledged on that day, recorded in the office of the register of deeds in and for the county of St. Croix and Territory of Minnesota, in book "C" of deeds, pages 15, 16, and 17, granted and conveyed unto the said Arnold W. Taylor and to his heirs and assigns, the undivided one-half part of the piece or parcel of land, described as follows: being all that portion of the northeast quarter of the southwest quarter and lot number two of section twenty-four, of township number twenty-nine north, of range twenty-four west, of the fourth principal meridian, lying north and west of a line commencing at a post on the river bluff, from which the quarter post between sections twenty-three and twenty-four bears north thirty-seven degrees forty minutes west, distant thirty-three chains thirteen links; thence running north thirty-seven degrees east, thirty-two chains and fifty-four links, to the centre of section number twenty-four, containing twenty-six acres and thirty-seven hundredths of an acre, be the same more or less, with the appurtenances thereunto belonging.

That the said recited conveyances included and vested, or were intended to include and vest in the said Arnold W. Taylor an estate in fee simple to one undivided half of all the tracts or parcels of land herein before described and specified as having been granted to the plaintiff, except lot number one of section twenty-three, in township twenty-nine north, of range twenty-four west, in the district of lands subject to sale at the Falls of St. Croix, Wisconsin, containing thirty-nine acres and sixty-five hundredths of an acre, which was not included in the descriptions contained in the said conveyances, nor intended so to be, and also excepting the tract or parcel of land now situate in the county of Ramsey and Territory of Minnesota, and known and described as follows, viz.: Commencing at a cedar stake or post on the bank of the Mississippi river, in lot number two of section number twenty-three, township number twenty-nine north, of range number twenty-four west, of the fourth principal meridian, running north sixty-two degrees east, twenty-four chains and sixty-seven links to the line between sections number fourteen and twenty-three of same town and range, to a stake thirty-one chains and seventy-seven links west from the corner of sections thirteen, fourteen, twenty-three, and twenty-four; thence due west along said section line to the river; thence down the left bank of the river to the place of beginning, containing seventeen acres and thirty-two hundredths of an acre, together with all the appurtenances thereunto belonging, (being the same premises which Franklin Steele and Annie E. Steele, his wife, by deed dated September 10th, 1849, recorded in the office of the register of deeds in and for the county of St. Croix and Territory of Minnesota, in book of deeds, on pages , granted and conveyed unto Pierre Bottineau in fee,) which also was not included in the descriptions contained in the said recited conveyances to the said Arnold W. Taylor, nor intended so to be.

That for the better understanding of the exact description and locality of the said tracts or parcels of land so held and owned by the plaintiff, and the said Arnold W. Taylor, as tenants in common, the plaintiff annexes hereto a correct plat or plan of the said tracts or parcels of land marked "A," and made part of this complaint.

And the complaint of the said plaintiff further respectfully shows to this court, that on the seventeenth of January, one thousand eight hundred and fifty-two, the plaintiff purchased of and from the said Arnold W. Taylor all of the interest of him, the said Arnold W. Taylor, in the real estate so before that time held and owned by him and the plaintiff, as tenants in common as aforesaid, except such as had been then already sold by them for the sum of twenty-five thousand dollars; and the said Arnold W. Taylor on that day made and executed under his hand and seal, and duly acknowledged, a bond or agreement in writing, recorded on the 19th day of January, 1852, in the office of the register of deeds in and for the county of Ramsey, in the Territory of Minnesota, in book "A" of bonds, pages 160, 161, 162, 163, 164, 165, 166, and 167, whereby *whereby* the said Taylor agreed, in consideration of the payment of the said sum of twenty-five thousand dollars to him by the plaintiff at the time and in the manner specified in the said bond, that he, the said Taylor, would give to the plaintiff a good and sufficient warranty deed of all his said interest in the said property, excepting two islands specified in the said bond or agreement in writing; and he thereby agreed that, in consideration of said payment, he would give a quit-claim deed of such islands as in and by the said bond or agreement in writing, a true copy whereof is hereto annexed, marked "B," and made part of this complaint, will more fully appear.

And the complaint of the plaintiff further respectfully shows to this court, that on the third day of March, 1853, the said Arnold W. Taylor, by power of attorney, duly executed under his hand and seal, and duly acknowledged and recorded in the office of the register of deeds in and for the county of Ramsey and Territory of Minnesota, in book "E" of deeds, on page 511, duly authorized and empowered George Barstow, esq., of the city of New York, as his attorney in fact, to make, execute, and deliver to the plaintiff the deeds of conveyance mentioned and agreed to be given in the said above recited bond or agreement in writing, as in and by the said power of attorney, a true copy whereof is hereto annexed, marked "C," and made part of this complaint, will more fully appear.

That on the fourth day of May, in the year one thousand eight hundred and fifty-three, the said Arnold W. Taylor, by his said attorney in fact, George Barstow, esq., authorized and empowered as aforesaid, made, executed, and delivered to the plaintiff, a deed dated on that day, whereby he conveyed to the plaintiff, and to his heirs and assigns, all of the following described pieces or parcels of land, situate, lying, and being in the county of Ramsey and Territory of Minnesota, being the water-power, mills, and village or town lots and other pro-

perty at St. Anthony Falls, as described in the deeds of conveyance from the plaintiff to him, the said Taylor, and above recited, excepting so much thereof as was sold and conveyed jointly by the plaintiff and one Ard Godfrey and the said Arnold W. Taylor, and excepting Hennepin or the lower island, and Boom island, as in and by the said deed recorded in the office of the register of deeds in and for the county of Ramsey and Territory of Minnesota, on the 5th day of May, 1853, in book "E" of deeds, a true copy whereof is hereunto annexed, marked "D," and made part of this complaint, will more fully appear.

That on the said fourth day of May, in the year one thousand eight hundred and fifty-three, the said Arnold W. Taylor, by the said George Barstow, esq., his attorney in fact, authorized and empowered as aforesaid, made, executed, and delivered to the plaintiff a certain other deed dated on that day, whereby he conveyed to the plaintiff and to his heirs and assigns all the right, title, and interest of him, the said Arnold W. Taylor, of, in, and to all those two certain islands, situate, lying, and being in the Mississippi river, opposite to the town of St. Anthony Falls, in the county of Ramsey and Territory of Minnesota, known and designated as "Boom island" and "Hennepin island," and of, in, and to the water privileges belonging thereto, as in and by the said deed duly recorded in the office of the register of deeds in and for the county of Ramsey and Territory of Minnesota, on the 5th day of May, 1853, in book "E" of deeds, on pages 526, 527, and 528; a copy whereof is hereto annexed, marked "E," and made part of this complaint, will more fully appear.

That the said two last-mentioned conveyances, so made by the said Arnold W. Taylor, by his said attorney in fact, were made in pursuance of, and in conformity with, the bond or agreement in writing herein before recited, and were intended to convey, and did convey, to the plaintiff and to his heirs and assigns all of the interest of the said Taylor in all of the real estate conveyed to the said Taylor by the plaintiff, and Annie E., his wife, as herein before mentioned and recited, except such parts thereof as had been previously thereto sold and conveyed by them as aforesaid, and the property described in the two conveyances last above mentioned and recited, is all of the property which was conveyed by the plaintiff and wife to the said Arnold W. Taylor as aforesaid, except as is in the said recited conveyances excepted.

And the complaint of the plaintiff further respectfully shows to this court, that he is in possession of the said described real estate, and has been in possession thereof from the time when the said Arnold W. Taylor conveyed the same to him as aforesaid hitherto. That he is, by virtue of the said recited conveyances, the legal and rightful owner of all the interest of the said Arnold W. Taylor, of, in, and to the said described property, so conveyed to him by the said Taylor, and that neither the defendants, nor any nor either of them, have any just or legal claim whatsoever to the same, nor to any part thereof.

That, nevertheless, the defendants claim an estate or estates, interest or interests, in the said described real estate, so conveyed to the plaintiff by the said Arnold W. Taylor, and have, from time to time, averred that they were owners of portions thereof, and have made and executed deeds of conveyance of parts of the same, and have placed such deeds upon the records of the county of Ramsey and Territory of Minnesota, in which the said property is situate, and have made, and are continuing to make, such alleged estates and interests in the said property the subjects of sale and barter from one to the other.

That the title to the said property has been involved in much confusion, and that the value thereof has been and is greatly impaired by such action on the part of the defendants.

That the plaintiff has been and now is greatly embarrassed thereby, in the management and disposition of the same.

That such pretended claims of the defendants are adverse to the estate or interest of the plaintiff in the said property, and are not in any respect derivable from or authorized by the plaintiff; wherefore the plaintiff demands judgment, determining the title to the said real estate so conveyed to him by the said Arnold W. Taylor, to be in the plaintiff, and requiring the defendants respectively to release their said adverse claims to estates or interests therein to the plaintiff, or, in the event of their failure or refusal so to do, that such judgment shall stand and be recorded in place of such release; and perpetually enjoining and restraining the defendants, and each and every of them, from further asserting or making such adverse claims to the said property, or intermeddling in any manner with the title thereto; and giving to the plaintiff such other and further relief as the nature of the case may require, and to this court may seem just.

RICE, HOLLINSHEAD & BECKER,
Attorneys for Plaintiff.

TERRITORY OF MINNESOTA,
County of Ramsey, ss:

Franklin Steele, of the county of Hennepin, in the Territory of Minnesota, being duly sworn according to law, doth depose and say, that he is plaintiff in the above entitled action, and that the foregoing complaint is true of his own knowledge.

FRANKLIN STEELE.

Sworn to and subscribed before me, this 12th day of June, 1854.

C. H. PARKER,
Notary Public.

[*For map of part of township No. 29 N., range No. 24 west, 4th mer., see original, page* 30.]

T-164- Page 30

"B."

Know all men by these presents, that I, Arnold W. Taylor, of Dorchester, Massachusetts, am held and firmly bound unto Franklin Steele, of Dacotah county, in the Territory of Minnesota, in the sum of twenty thousand dollars to be paid to said Steele, which payment well and truly to be made, I bind myself, my heirs and assigns, firmly by these presents. Sealed with my seal, and dated this seventeenth day of January, 1852.

The conditions of this obligation are as follows, to wit: the said Arnold W. Taylor agrees to sell to the said Franklin Steele all his interest in the property at St. Anthony Falls, formerly purchased of said Steele, (except what is already sold jointly by all the proprietors,) for the sum of twenty-five thousand dollars, one thousand dollars of which is to be paid on the ensealing and delivering of these presents, and twenty-four thousand dollars to be paid in sixty days from date hereof, at the Merchants or Suffolk Bank in Boston, and a certificate of the deposit of the same afterwards to be furnished to said Taylor at St. Anthony Falls; said Taylor is to keep all moneys received by him from said Steele on account of rents; and said Steele is to assume all contracts already entered into by said Taylor, included in the schedule hereunto annexed, to take and pay for the store erected by said Taylor, to pay all taxes on said property, to refund to said Taylor all moneys advanced by said Taylor on the aforesaid contract, and to pay to Robert Bunten his wages and expenses as agreed upon by said Taylor, to wit: three dollars per day and traveling expenses and board, from the time he left Boston with said Taylor until he shall return to Boston. In case the said twenty-four thousand dollars be not paid at the end of the said sixty days, then the said one thousand dollars to be paid on the ensealing and delivering of these presents is to be forfeited to the said Taylor, but on the payment of the said twenty-four thousand dollars at the time and in the manner above mentioned, the said Taylor is to give a good and sufficient warrentee deed of all the above mentioned property purchased by said Steele, (being the undivided half of the water-power, mills, village or town lots, and other property at St. Anthony Falls, as described in the deed of conveyance from said Steele to said Taylor,) excepting the two islands mentioned in one of the said deeds, to wit: "Hennepin or the lower island" and "Boom island," of which said islands said Taylor is to give a quit-claim deed, and excepting that portion of the property already sold as above stated; and also to assign to said Steele his interest in all bonds and mortgages, together with other choses in action, take on the sale of any portion of said property which are now held by them, and to account for all proceeds of such sales received by him; and in case any of said bonds and mortgages have been disposed of by said Taylor, he shall account for the same to said Steele; said Taylor is to continue in the possession and use of his mills until the above mentioned twenty-four thousand dollars is paid, and the conditions of this bond are fulfilled; and the

suits now pending between said Taylor and Steele are to continue the same as though this contract was not made, until after the payment of the said twenty-four thousand dollars, and after all the above conditions are complied with by said Steele, then the above mentioned suits are to be discontinued, each paying his own costs.

In case any of the persons who have entered into contracts with said Taylor shall choose to abandon their contracts with said Taylor, they shall be at liberty so to do, and said Steele shall pay them severally a just and fair compensation for the work already done.

Now, if upon the payment of the above mentioned twenty-four thousand dollars in manner as above provided, the said Taylor shall furnish to said Steele a good and sufficient warrantee deed of the above described property, (except the above named islands, and of them a quit-claim deed,) and on the fulfilment of the above conditions by said Steele, if he shall fulfil the conditions of the above obligations on his part, then this obligation to be void, otherwise to remain in full favor and virtue.

In witness whereof, I have hereunto set my hand and seal the day and year first above written.

ARNOLD W. TAYLOR, [L. S.]

In presence of—
DAVID A. SECOMBE,
J. W. NORTH.

MINNESOTA TERRITORY,
County of Ramsey, ss:

On this seventeenth day of January, 1852, personally appeared before me, Arnold W. Taylor, to me known to be the person named in and who executed the above bond, and acknowledged that he executed the same freely, and for the uses and purposes therein expressed.

Dated Jan. 17th, 1852.

J. W. NORTH,
Notary Public.

Schedule of Contracts.

1st. Contract with Farnham and Stinson, hereto named.

2nd. Contract with R. C. Rogers, hereto annexed.

3rd. Contract with John McDonald, hereto annexed.

4th. A verbal contract with S. W. Farnham & Co., to saw their logs the next season by the thousand, or rent them a mill to saw them, or buy their logs.

5th. A verbal contract with Joseph Libby the same as with S. W. Farnham & Co.

6th. A contract with Joseph Libby for repairing the dam, and for timber for building mills, which contract was entered into in the fall of 1850.

Article of agreement made and entered into this 20th day of November, 1851, between Arnold W. Taylor, of Dorchester, Massachusetts,

and John McDonald, of St. Anthony Falls, witnesseth: That the said McDonald, for the consideration hereinafter mentioned, agrees to and with the said Taylor to build two sawmills on the dam at St. Anthony Falls, doing all the work in building the frame and gearing and putting said mills in complete order for running, for the sum of one thousand dollars per mill. Said McDonald is to commence the work immediately, and to have said mills completed and ready for sawing, with platform and cartway below the mills, and slip and gearing for drawing up the logs at the head of the mills, on or before the first day of June next; said mills are to be built in a good and workmanlike manner, and in all respects equal to the mills already built on said dam.

Said McDonald is to have the use of a shop (which said Taylor is to build) during the winter and until said mills are completed.

Said Taylor is to furnish all lumber and materials of every description for said mills as fast as the same are wanted, the timber to be taken in the pond and on the platform below the mills now in use, and the cartings to be furnished as soon as navigation opens in the spring, and is to pay said McDonald five hundred dollars during the winter as the work progresses, five hundred dollars when the work is completed, and the balance on the 16th day of August next.

In witness whereof we have hereunto set our hands and seals the day and year first above written.

JOHN McDONALD, [L. S.]
ARNOLD W. TAYLOR. [L. S.]

In presence of—
J. W. NORTH.

Article of Agreement made and entered into this 21st day of October, 1851, between Arnold W. Taylor, of Dorchester, Massachusetts, of the first part, and Summer W. Farnham, and Charles F. Stinson, known by the style and firm of Farnham and Stinson, of St. Anthony falls, of the second part, witnesseth:

That the said Taylor agrees to saw in the mills at St. Anthony Falls for said Farnham and Stinson six hundred and one thousand feet of logs, now lying in the boom above said mills, for four dollars per thousand feet; said logs are to be all sawed by or before the first day of June next, according to orders furnished by the parties of the second part. In case said Taylor should not saw all or any part of said logs, he hereby purchases and agrees to pay for all he does not saw, the sum of four dollars and a half per thousand feet, which payment shall be due on the first day of June next, and the amount of logs to be paid for by said party of the first part shall be determined by scaling and measurement to be made by Caleb D. Dorr, or some suitable person agreed on by the parties or selected by J. W. North, after said Taylor shall have discontinued sawing on the same; said Farnham and Stinson are to make payment for sawing said logs as often as one hun-

dred thousand feet shall be sawed; said Farnham and Stinson are to have the privilege of one half of the mill yard and rafting ground, and are to remove the lumber, slabs and edgings, as fast as the same are sawed.

In witness whereof we have set our hands and seals the day and year first above written.

ARNOLD W. TAYLOR, [L. S.]
FARNHAM & STINSON. [L. S.]

Signed, sealed, and delivered, in presence of
J. W. NORTH.

Article of agreement made and entered into this 20th day of November, between Arnold W. Taylor of Dorchester, Massachusetts, and Richard C. Rogers of St. Anthony Falls, witnesseth: That the said Rogers, for the consideration herein after mentioned, agrees to and with the said Taylor to build two sawmills, on the dam at St. Anthony Falls, doing all the work in building the frame and gearing, and putting said mills in complete order for running, for the sum of one thousand dollars per mill; said Rogers to commence the work immediately, and to have said mills completed and ready for sawing, with platform and cartway below the mills, and slip and gearing for drawing up logs at the head of the mills, on or before the first day of June next; said mills are to be built in a good and workmanlike manner, and in all respects equal to the mills already built on said dam; said Rogers is to have the use of the shop near the blacksmith-shop during the winter, and until said mills are completed; said Taylor is to furnish all lumber and materials of every description for said mills as fast as the same are wanted; the timber is to be taken in the pond and on the platform below the mills now in use, and the castings to be furnished as soon as navigation opens in the spring, and is to pay the said Rogers five hundred dollars during the winter as the work progresses, five hundred dollars when the work is completed, and the balance on the 16th day of August next.

In witness whereof we have hereunto set our hands and seals the day and year first above written.

R. C. ROGERS; [L. S.]
In presence of ARNOLD W. TAYLOR. [L. S.]
DAVID A. SECOMBE,
ROBERT BUNTEN.

The foregoing bond endorsed as follows:

TERRITORY OF MINNESOTA,
Office of Register of Deeds of Ramsey county, M. T.

I hereby certify that the within bond was received for record Jan. 19th, 1852, at 10 o'clock a. m., and recorded in book "A" of bonds, pages 160, 161, 162, 163, 164, 165, 166, 167.

M. S. WILKINSON,
Register of deeds Ramsey county, Min. Ter.

1018

Know all men by these presents, that I, Arnold W. Taylor, of the city of Boston, in the commonwealth of Massachusetts, hereby constitute and appoint George Barstow, of the city of New York, my true and lawful attorney, to proceed to the city of New York, to the Territory of Minnesota, and back, or elswhere if he shall deem it necessary, and for me and in my name, to adjust, settle and arrange all my business, prosecute and defend, or settle, or compromise all suits at law or in equity, execute all instruments and conveyances with or without covenants, under seal or not under seal, and to do and perform all things of every name and kind, appertaining to and connected in any and every way with my purchases and sale at St. Anthony Falls, and with my business and business relations in Minnesota Territory, just as fully as I myself might or could do if personally present and acting in the premises, hereby ratifying and confirming all the doings of my said attorney in the premises, vesting him with unlimited discretion and giving him full authority to make use of my name whenever and however he shall judge necessary or think proper in the premises, with power of substitution.

In testimony whereof I have hereunto set my hand and affixed my seal at the city of Washington, in the District of Columbia, this twenty-third day of March, A. D. 1853.

ARNOLD W. TAYLOR. [L. S.]

Signed, sealed and delivered in presence of—(the words "and conveyances with or without covenants" being interlined before signing)—

A. J. CHATFIELD,
OTIS HOYT.

DISTRICT OF COLUMBIA,
City and county of Washington:

This 23rd day of March, A. D. 1853, before the subscriber, a commissioner in and for the said district, appointed by the governor of the Territory of Minnesota, to take the acknowledgment of deeds and other writings under seal, to be used and recorded in said Territory of Minnesota, personally came the above named Arnold W. Taylor, and in due form of law acknowledged the within power of attorney to be his act and deed, to the end that the same might be recorded as such.

[L. S.] Witness my hand and official seal the day and year aforesaid.

CHARLES DE SELDING,
Commissioner for the Territory of Minnesota.

The foregoing endorsed: "Power of attorney—Arnold W. Taylor to George Barstow—Office of register of deeds, Ramsey county, M. T.—I hereby certify that the within power of attorney was filed in this

office for record, on the 5th day of May, 1853, at 9 o'clock, a. m., and was duly recorded in book 'E' of deeds on page 511."

M. S. WILKINSON,
Register of Deeds,
By WM. H. TINKER,
Deputy.

Indenture made this fourth day of May, in the year one thousand eight hundred and fifty-three, between Arnold W. Taylor, of Dorchester, in the State of Massachusetts, by George Barstow, his duly authorized attorney in fact, of the first part, and Franklin Steele, of Hennepin county in the Territory of Minnesota, of the second part: Whereas the said Arnold W. Taylor, party of the first part, in and by his certain bond or agreement in writing, bearing date the seventeenth day of January, in the year one thousand eight hundred and fifty-two, bound himself and agreed to sell to the said Franklin Steele, party of the second part, all of the interest of him the said Arnold W. Taylor, in certain property at St. Anthony Falls, in the Territory of Minnesota aforesaid, for the sum of twenty-five thousand dollars to be paid, as is in the said bond or agreement in writing dated as aforesaid particularly set forth, as by the said bond or agreement in writing recorded on the 19th day of January, 1852, in the office of the register of deeds for the county of Ramsey, in the Territory of Minnesota, in liber "A" of bonds, on pages 160, 161, 162, 163, 164, 165, 166 and 167, reference being thereunto had will more fully and at large appear; and whereas in a certain suit in chancery, instituted in the district court in and for the first judicial district and county of Ramsey, in the Territory of Minnesota aforesaid, on the 25th day of May, 1852, wherein the said Franklin Steele, party of the second part, was complainant, and the said Arnold W. Taylor, party of the first part, was defendant, the said court *did* on the fourth day of May, 1853, ordered, adjudged and decreed, inter alia, that the said Arnold W. Taylor convey by good and sufficient warrantee deed to the said Franklin Steele, his heirs and assigns, all of the right, title and interest of him the said Arnold W. Taylor, of, in, and to *of* the property hereinafter described and hereby granted, as in and by the proceedings in the said suit duly entered among the records of the said court, reference being thereunto had, will more fully and at large appear:

Now this indenture witnesseth, That the said Arnold W. Taylor, by George Barstow, his duly authorized attorney in fact, for and in consideration of the sum of twenty-five thousand dollars in hand paid by the said Franklin Steele, party of the second part, the receipt whereof is hereby acknowledged, and in compliance with the bond and agreement herein before recited, and in obedience to the said decree, hath given, granted, bargained, sold, conveyed, and confirmed, and by these presents doth give, grant, bargain, sell, convey, and confirm unto the said Franklin Steele, party of the second part, his heirs and assigns

forever, all of the following described pieces or parcels of land, situate, lying, and being in the county of Ramsey and Territory of Minnesota, being the water-power, mills, and village or town lots and other property at St. Anthony Falls, as described in the deeds of conveyances from the party of the second part, to the party of the first part, excepting so much thereof as was sold and conveyed jointly by the said Franklin Steele, Ard Godfrey, and the said Arnold W. Taylor, party of the first part, and excepting Hennepin or the lower island and Boom island, free and discharged of all liens and incumbrances created, suffered, or permitted, by the said party of the second part, or his assigns, subsequent to the date of the bond or agreement herein before recited, the said property being more particularly and accurately described as follows, viz: The one undivided half of the town of St. Anthony Falls, lying on the eastern shore of the Mississippi river, (a plat or plan of which is hereunto annexed, and made part of this deed,) which said town contains about two hundred and fifty acres of land, more or less, and is embraced in certain patents granted by the Government of the United States to Franklin Steele, the party of the second part, and certain deeds duly recorded in the said county of Ramsey, from Henry H. Sibley and wife, and Calvin A. Tuttle and wife, to the said Franklin Steele, party of the second part, excepting and reserving the three islands lying in the Mississippi river, and designated upon the plan hereunto annexed, as Hennepin, Boom, and Nicollett islands, and excepting and reserving all the lots in said town-plat, which have been sold and conveyed by the said Arnold W. Taylor, Franklin Steele, and Ard Godfrey, prior to the first day of January, 1852, not exceeding two hundred and fifty lots; also the one undivided half of a tract of land containing about four acres, more or less, formerly owned by Pierre Bottineau, and designated upon the annexed plat as Boom landing; also the one undivided half of the Boom in the Mississippi river, opposite the said Boom landing; also the one undivided half of all the water privileges belonging to the said premises, and the one undivided half of the dam erected upon said premises, extending from the eastern shore of the Mississippi river to Hennepin and Nicollett islands; also the one undivided half of all sawmills now erected on said dam, and of the entire water front and water privileges upon the east side of Nicollett island, and of so much of said island as may be flowed by the water from the said dam, or of any dam which may be hereafter erected on the said premises, and the right of flowing the same, (being the same property formerly purchased of the said Franklin Steele by the said Taylor:)

To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise appertaining, and all the estates, right, title, interest, and claim whatsoever of the said party of the first part, either in law or equity, and in and to the above-described premises, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns for-

ever; and the said Arnold W. Taylor, party of the first part, for himself, his executors, and administrators, doth covenant and agree to and with the said party of the second part, his heirs, and assigns; that he is well seized in fee of the said undivided half of the said premises, and hath good right to sell and convey the same in the manner above written, and that the same are free from all incumbrances whatever, and that the aforesaid premises, in the quiet and peaceable possession of the said party of the second part, his heirs and assigns, against all and every person lawfully claiming, or to claim the whole or any part thereof, he will forever warrant and defend.

In testimony whereof, the said party of the first part hath, by his said attorney in fact, hereunto set his hand and seal the day and year first above written.

ARNOLD W. TAYLOR, [L. S.]
By GEORGE BARSTOW,
his Attorney in fact.

Signed, sealed, and delivered in presence of—(ah interlineation of the words "being the same property purchased of Franklin Steele by the said Taylor first made")—

J. M. STONE,
WILLIAM HOLLINGSHEAD.

TERRITORY OF MINNESOTA,
County of Ramsey, ss:

Be it remembered, that on the fourth day of May, 1853, before the undersigned, personally came Arnold W. Taylor by George Barstow, his attorney in fact, the grantor to the foregoing and within deed from him, as such grantor, to Franklin Steele, to me personally known to be the identical person described in, and who executed the said deed, and acknowledged he executed the said deed freely and voluntarily, for the uses and purposes therein expressed.

J. M. STONE,
Notary Public.

The foregoing endorsed: "Warrantee deed, Arnold W. Taylor to Franklin Steele—town lots, mill property, and water privileges, St. Anthony —Office of register of deeds, Ramsey co., M. T.—I hereby certify that the within deed was filed in this office for record on the 5th day of May, 1853, at 9 o'clock a. m., and was duly recorded in book 'E' of deeds, on pages 528, 529, and 530—M. S. Wilkinson, register of deeds, by Wm. H. Tinker, deputy—Rice, Hollinshead & Becker."

Indenture made this fourth day of May, in the year one thousand eight hundred and fifty-three, between Arnold W. Taylor of Dorchester, in the State of Massachusetts, by George Barstow, his duly authorized attorney in fact, of the first part, and Franklin Steele of Hennepin county, in the Territory of Minnesota, of the second part: Whereas the said Arnold W. Taylor, party of the first part, in and by his certain bond or agreement in writing, bearing date the seventeenth

day of January, in the year one thousand eight hundred and fifty-two, bound himself, and agreed to sell to the said Franklin Steele, party of the second part, all the interest of him, the said Arnold W. Taylor, in certain property at St. Anthony Falls, in the Territory of Minnesota aforesaid, for the sum of twenty-five thousand dollars, to be paid as in the said bond or agreement in writing, particularly set forth, as by the said bond or agreement in writing dated as aforesaid, and recorded on the 19th day of January, 1852, in the office of the register of deeds for the county of Ramsey, in the said Territory of Minnesota, in liber "A" of bonds on pages 160, 161, 162, 163, 164, 165, 166, and 167, reference being thereunto had, will more fully and at large appear.

And whereas, in a certain suit in chancery, instituted in the district court in and for the first judicial district and county of Ramsey, in the Territory of Minnesota aforesaid, on the 25th day of May, 1852, wherein the said Franklin Steele, party of the second part, was complainant, and the said Arnold W. Taylor, party of the first part, was defendant; the said court did, on the fourth day of May, 1853, order, adjudge, and decree, inter alia, that the said Arnold W. Taylor convey, by good and sufficient quit-claim deed, to the said Franklin Steele, his heirs and assigns, *of* all the right, title, and interest of him, the said Arnold W. Taylor, of, in, and to the property hereinafter particularly described, and hereby granted, as in and by the proceedings in the said suit, duly entered among the records of the said court, reference being thereunto had, will more fully and at large appear.

Now, this indenture witnesseth, That the said Arnold W. Taylor, by Geo. Barstow, his duly authorized attorney in fact, for and in the consideration of the sum of twenty-five thousand dollars, in hand paid by the said Franklin Steele, party of the second part, the receipt whereof is hereby acknowledged, and in compliance with the bond and agreement herein before recited, and in obedience to the said decree, hath remised, released, and forever quit-claimed, and doth by these presents remise, release, and forever quit-claim unto the said Franklin Steele, party of the second part, his heirs and assigns, all the right, title, and interest of him, the said Arnold W. Taylor, of, in, and to all those two certain islands, situate, lying, and being in the Mississippi river, opposite the town of St. Anthony Falls, in the county of Ramsey and Territory of Minnesota, known and designated as "Boom" and "Hennepin" islands, and of, in, and to the water privilege belonging thereto. To have and to hold the same, together with all the rights, immunities, privileges, and appurtenances to the same belonging, unto the said party of the second part, his heirs and assigns forever.

In witness whereof, the said party of the first part hath, by George Barstow, his attorney in fact, hereunto set his hand and seal, the day and year first above written.

ARNOLD W. TAYLOR, [L. S.]
By his attorney in fact, GEORGE BARSTOW.

Signed, sealed, and delivered in presence of—
J. M. STONE, WM. HOLLINSHEAD.

TERRITORY OF MINNESOTA,
County of Ramsey, ss:

Be it remembered, that on the 4th day of May, A. D. 1853, before the undersigned, personally came Arnold W. Taylor, by George Barstow, his attorney in fact, the grantor to the foregoing and within deed, from him, as such grantor, to Franklin Steele, to me personally known to be the identical person described within, and who executed the said deed, and acknowledged that he executed the same freely and voluntarily, for the uses and purposes therein expressed.

J. M. STONE,
Notary Public.

The foregoing endorsed: "Quit-claim deed—Arnold W. Taylor to Franklin Steele—To Hennepin and Boom islands—Office of the register of deeds, Ramsey county, M. T.—I hereby certify, that the within deed was filed in this office for record on the 5th day of May, A. D. 1853, at 9 o'clock a. m., and was duly recorded in book 'E' of deeds, pages 226, 227, and –'8."

M. S. WILKINSON,
Register of deeds,
By W. H. TINKER, *Deputy.*

"RICE, HOLLINSHEAD & BECKER."

The foregoing papers all attached together and endorsed: "Territory of Minnesota, district court 2nd dist., county of Ramsey—Franklin Steele against James H. Trader and others.

Filed June 13, 1854.

GEORGE W. PRESCOTT,
Dept. clerk.

RICE, HOLLINSHEAD & BECKER,
Attys. for Plf."

TERRITORY OF MINNESOTA,
Dis'ct court, 2nd dis'ct, county of Ramsey.

I, George W. Prescott, clerk of the above entitled dis'ct court, certify that the foregoing is a true copy of the complaint on file in said clerk's office, in the case therein entitled, and which is now on file in said cause.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at St. Paul, in said county, this 7th day of January, A. D. 1856.

[L. S.]

GEORGE W. PRESCOTT, *Clerk.*

MINNESOTA TERRITORY,
District court, 2d district, for the county of Ramsey.

FRANKLIN STEELE
against
DAVID A. SECOMBE and others. } Answer.

The answer of David A. Secombe, one of the defendants in the above entitled action, to the complaint of the plaintiff, herein respectfully shows to this court:

That the said defendant claims to be, and is, the owner of one undivided half part of a certain piece or parcel of land situate, lying, and being in said county, described as follows, to wit: The strip of land, Main street so called, in the town of St. Anthony Falls, as surveyed by Wm. R. Marshall, and the Mississippi river, commencing at a point on said Main street, opposite the dividing line, between lots number seventeen (17) and eighteen (18), in block number fifty (50) in said town, and extending to the upper boundary of said town, together with the riparian right to the same belonging. Also the sawmills in the bed of said river, opposite block number forty-seven (47) in said town, as follows, to wit: Sawmills known and designated as numbers one (1), two (2), three (3), four (4), and eight (8), in the block of said sawmills. Also one undivided fourth part of sawmill known and designated as number seven (7) in said block of sawmills; that this said property, above described, is a part of the property which is described in a bond or agreement in writing, and in the two deeds of conveyance last mentioned, and set forth in the complaint of the plaintiff in this action, as will appear, reference being had to the plat of said town of Saint Anthony Falls, annexed to one of the said deeds. That the title of this defendant to the above described property is as follows, to wit: The said property was granted and conveyed to this defendant, and to John W. North, and their, and each of their heirs and assigns, by the sheriff of said county, on the 17th day of May, 1853, by two deeds of conveyance, on that day duly executed, acknowledged, and delivered by the said sheriff, in pursuance of a sale of said property duly made by the said sheriff on the 17th day of March, 1853, upon and by virtue of a certain writ of execution duly issued out of this court on the 31st day of January, 1853, upon a judgment duly entered and docketed in this court on the 28th day of January, 1853, in an action in this court, wherein this defendant was plaintiff, and Arnold W. Taylor, the person mentioned in the complaint in this action, was defendant, in favor of the said plaintiff, David A. Secombe, and against the said defendant, Arnold W. Taylor, for the sum of twelve hundred and fourteen dollars and thirty-five cents, which said deeds last mentioned were duly recorded in the office of the register of deeds of said county, on the said 17th day of May, 1853, in book "E" of deeds, on pages 575, 576, 577, 578, 579, 580. And on the said 17th day of May, 1853, the said John W. North, and Ann L. North, his wife, by deed duly executed, acknowledged and delivered, remised, released, and forever

quit-claimed unto this defendant, his heirs and assigns, all their right, title and interest, into and unto the said property so conveyed by the said sheriff unto the said John W. North, as aforementioned. And this defendant further answering denies, that the two conveyancss last mentioned and set forth in the complaint in this action, or either of them, were made in pursuance of, or in any conformity with, the bond or agreement in writing mentioned and set forth in said complaint, as in said complaint alleged. And this defendant denies that in the certain suit in chancery mentioned in said complaint, the court ordered, adjudged, or decreed, the said conveyances last mentioned and set forth in said complaint, or either of them, to be made, or that they, or either of them, were made in obedience to such decree, as is in such complaint alleged. And this defendant further denies, that in the said suit in chancery, the court has ever made any final order, judgment, or decree whatever, as will more fully appear by the record and proceedings in said suit, reference being thereunto made in this answer for that purpose.

This defendant further answering alleges, that after the said suit in chancery had been put at issue, and while it was at issue, the plaintiff in this action and Arnold W. Taylor aforesaid, conspired and colluded together for the purpose of defrauding this defendant and other persons who had there purchased, for a valuable consideration, a portion of the subject-matter of the said suit in chancery; and that the said plaintiff and Arnold W. Taylor, so conspiring and colluding together for the said purpose, on or about the twenty-third day of March, 1853, entered on arrangement to settle the said suit in chancery between themselves, and without permitting the court to pass upon the subject-matter in controversy upon the issue there joined in said suit; and that by the said arrangement so made, the said Taylor agreed to withdraw his defence to the said suit in chancery, and allow the bill of complaint in said suit to be taken as confessed by and against him the said Taylor, and to suffer the said Steele to take a decree in said suit to the effect and extent of the whole prayer of the said Steele in his said bill of complaint; and that by the said arrangement so made, the said Taylor agreed to sell and convey to the said Steele the property mentioned and described in the said bond or agreement in writing, and which was the subject-matter of the said suit in chancery, for a consideration, and on terms which were distinct and different from the consideration and terms contained and agreed upon in said bond or agreement in writing; and that the said two conveyances in the complaint in this action mentioned and set forth, made by George Barstow, as the attorney in fact of Arnold W. Taylor, were made by virtue of, and to carry out and consummate the said agreement made on the said twenty-third day of March, 1853, for the said distinct and different consideration, and on the said different terms, for the purpose of defrauding this defendant and others who were prior purchasers, for a valuable consideration, of a portion of the property so conveyed by the said Taylor as aforesaid.

Wherefore, this defendant says, that the said two conveyances last

mentioned, and set forth in the complaint in this action, are wholly null and void, so far as relates to this defendant.

And therefore this defendant demands the judgment of this court, determining the title of the said property first mentioned, and describing in this answer, and claimed by the defendant to be in this defendant, and requiring the said plaintiff to release his said adverse claim to an estate or interest in said property to this defendant; or, in the event of his failure or refusal so to do, that such judgment shall stand and be recorded in the place of such release, and perpetually enjoining and restraining the said plaintiff from further asserting or making such adverse claim to the said property, or intermeddling in any manner with the said property or title thereto, and requiring the plaintiff to deliver possession of the said property to this defendant, and giving to this defendant such other or further relief as the matter of the case may require and to this court may seem just.

NOR'TH & SECOMB,
Attorneys for Defendant.

MINNESOTA TERRITORY,
County of Ramsey, ss:

David A. Secomb, the defendant named in the foregoing answer, being first duly sworn, says, that his answer is true, of his own knowledge, except as to matters therein stated on his information or belief, and as to those matters that he believes it to be true.

DAVID A. SECOMB.

Subscribed and sworn to this sixth day of July, 1854, before me,
GEORGE W. PRESCOTT,
Deputy Clerk.

The foregoing endorsed: "Filed July 31, 1854.
"GEO. W. PRESCOTT,
"*Dept. Clerk.*"

Also endorsed: "Due service of the answers of David A. Secomb in this cause. John Rollins and Williams D. Garland is hereby admitted, and it is stipulated that all the defendants, represented by North & Secomb, have ten days further time to answer.
"Dated July 25th, 1854.
RICE, HOLLINSHEAD & BECKER,
Att'ys for Pl'ff."

MINNESOTA TERRITORY,
District court, 2nd district, Ramsey county.

FRANKLIN STEEL
against
WILLIAM H. SOUNSEND and others. } *Answer.*

The answer of William H. Sounsend, one of the defendants in the

above entitled action to the complaint of the plaintiff, herein respectfully shows to the court:

That said defendant claims to be the owner of one undivided half part of the following described real property, situate, lying, and being in said county, to wit: lots in the town of St. Anthony Falls, as surveyed by William R. Marshall, known and designated as follows—lots one (1), four (4), and five (5), in block fifty-four (54); lots four (4) and five (5) in block twenty-one (21), and lots one (1), two (2), three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), and ten (10), in block eighty-eight (88.) That the said property above described is a part of the property which is described in the bond or agreement in writing, and in the two deeds of conveyance last mentioned and set forth in said complaint; that the title of this defendant to the above-described property is as follows, to wit: the said property was granted and conveyed to this defendant and his heirs and assigns, by the sheriff of said county, by two deeds of conveyance of said property duly executed, acknowledged, and delivered by the said sheriff; one of the said deeds on the twenty-fifth day of May, 1853, in pursuance of a sale of said property duly made by said sheriff, on the twenty-fourth day of March, 1853, upon and by virtue of a certain writ of execution duly issued out of this court on the 10th day of February, 1853, upon a judgment duly rendered and docketed in this court on the 12th day of November, 1852, in an action in this court, wherein one Edwin B. Rounsdell was plaintiff, and Arnold W. Taylor, person mentioned in said complaint, was defendant, in favor of the said plaintiff, and against the said defendant, for the sum of two hundred twelve dollars and sixty-one cents; and the other of said deeds, on the said twenty-fifth day of May, 1853, in pursuance of a sale of said property duly made by said sheriff on the said twenty-fourth day of March, 1853, upon and by virtue of a certain writ of execution duly issued out of this court on the third day of February, 1853, upon a judgment duly rendered and docketed in this court on the said third day of February, 1853, in an action in this court, wherein one Isaac Gilpatrick was plaintiff, and the said Arnold W. Taylor was defendant, in favor of said plaintiff and against said defendant, for the sum of eleven hundred twenty-two dollars and seventy-one cents; which said deeds were on the first day of June, 1853, duly recorded in the office of the register of deeds of said county in book "F" of deeds, on page 53, 54, 55, and 56.

And this defendant further answering, that the two conveyances last mentioned and set forth in the complaint in this action, or either of them, were made in pursuance of, or in conformity with the bond or agreement in writing mentioned and set forth in said complaint, as in said complaint alleged.

And this defendant denies that in the certain suit in chancery mentioned in said complaint, the court ordered, adjudged, or decreed the said conveyance last mentioned and set forth in said complaint, or either of them, to be made, or that they or either of them were made in obedience to such decree as is in the said complaint alleged; and this defen-

dant further denies, that in the said suit in chancery the court has ever made any final order, judgment, or decree whatever, as will more fully appear by the record and proceedings in said suit, reference being thereunto made in this answer for that purpose.

This defendant further answering alleges, that after said suit in chancery had been put at issue, and while it was at issue, the plaintiff in this action and Arnold W. Taylor aforesaid conspired and colluded together for the purpose of defrauding this defendant and other persons who had there purchased for a valuable consideration a portion of the subject-matter of the said suit in chancery; and that the said plaintiff, and Arnold W. Taylor, so conspiring and colluding together for the said purpose, on or about the twenty-third day of March, 1853, entered into an agreement to settle the said suit in chancery between themselves, and without permitting the court to pass upon the subject-matter in controversy upon the issue there joined in the said suit. And thus, by the said arrangement so made, the said Taylor agreed to withdraw his defence to the said suit in chancery, and allow the bill of complaint in said suit to be taken as confessed by and against him, the said Taylor, and to suffer the said Steel to take a decree of said suit to the effect and extent of the whole prayer of the said Steel in his said bill of complaint; and that by the said arrangement so made, the said Taylor agreed to sell and convey to the said Steel the property mentioned and described in the said bond or agreement in writing, and which was the subject-matter of the said suit in chancery, for a consideration, and on terms which were distinct and different from the consideration and terms contained and agreed upon in said bond or agreement in writing.

And that the said two conveyances in the complaint in this action mentioned and set forth, made by George Barstow as the attorney in fact of Arnold W. Taylor, were made by virtue of and to carry out and consummate the said agreement made on the said twenty-third day of March, 1853, for the said and distinct and different consideration and on the said different terms, for the purpose of defrauding this defendant and others, who were prior purchasers, for a valuable consideration, of a portion of the property so conveyed by the said Taylor as aforesaid.

Wherefore, this defendant says that the said two conveyances last mentioned and set forth in the complaint in this action are wholly null and void so far as relates to this defendant.

And, therefore, this defendant demands the judgment of this court determining the title of the said property first-mentioned and described in this answer, and claimed by this defendant to be in this defendant, and requiring the said plaintiff to release his said adverse claim to an estate or interest in the said property to this defendant, or in the event of his failure or refusal so to do, that such judgment shall stand, and be recorded in the place of such release, and, perpetually enjoining and restraining the said plaintiff from further asserting or making such adverse claim to the said property, or intermeddling in any manner with the said property or the title thereto, and requiring the said plain-

tiff to deliver possession of the said property to this defendant, and giving to this defendant such other or further relief as the nature of the case may require, and to this court may seem just.

NORTH AND SECOMB,
Attorneys for Defendant.

MINNESOTA TERRITORY,
County of Ramsey, ss:

William H. Townsend, the defendant named in the foregoing answer, being duly sworn, says, that this answer is true, of his own knowledge, ex as to matters therein stated, on his information or belief, and as to those matters he believes it to be true.

WM. H. TOWNSEND.

Subscribed and sworn to this 24th of July, 1854, before me,
GEORGE W. PRESCOTT,
Notary public Min. Ter.

MINNESOTA TERRITORY,
District court, 2nd district, for the county of Ramsey.

FRANKLIN STEEL
against
WILLIAM D. GARLAND and others.

Answer.

The answer of William D. Garland, one of the defendants in the above entitled action, to the complaint of the plaintiff, herein respectfully shows to this court, that the said defendant claims to be, and is, the owner of one undivided fourth part of the following described real property, situate, lying and being in said county, as follows, to wit: one of the sawmills in the block of sawmills, in the bed of the Mississippi river, opposite block number forty-seven (47), in the town of Saint Anthony Falls, as surveyed by William R. Marshall, the said mill being known and designated as mill number seven (7), in said block of sawmills; that the said property above described is a part of the property which is described in the bond or agreement in writing, and in the two deeds of conveyance last-mentioned and set forth in the complaint in this action, that the title of this defendant to the above described property is as follows, to wit: The said property was granted and conveyed to David A. Secomb, one of the defendants in this action, and to his heirs and assigns, on the seventeenth day of May, 1853, by a deed of conveyance on that day duly executed, acknowledged, and delivered by the sheriff of said county, in pursuance of a sale of said property, duly made by the said sheriff on the said seventeenth day of March, 1853, upon and by virtue of a certain writ of execution duly issued out of this court, on the thirty-first day of January, 1853, upon a judgment duly rendered and docketed in this court, on the twenty-eighth day of January, 1853, in an action in this court, wherein the defendant, David A. Secomb, was plaintiff, and Mr. Arnold W. Taylor, the person mentioned in the complaint in this action, was defend-

ant, in favor of the said David A. Secomb, and against the said Arnold W. Taylor, for the sum of twelve hundred and fourteen dollars and thirty-five cents, which said deed last-mentioned was duly recorded on the said seventeenth day of May, 1853, in the office of the register of deeds of said county, in book "E" of deeds, on pages 575, 576, and 577.

And on the said seventeenth day of May, 1853, by deed duly executed, acknowledged, and delivered, the said David A. Secombe remised, released, and forever quit-claimed, unto this defendant, and to his heirs and assigns, the said property first above described.

And this defendant further answering denies, that the two conveyances last mentioned and set forth in the complaint in this action, or either of them, were made in pursuance of, or in conformity with, the bond or agreement in writing mentioned and set forth in said complaint, as is in said complaint alleged.

And this defendant denies, that in the certain suit in chancery mentioned in said complaint, the court ordered, adjudged, or decreed, the said conveyance last mentioned and set forth in said complaint, or either of them, were made in obedience to such decree, as in said complaint alleged.

And this defendant further denies, that in the said suit in chancery this court has ever made any final order, judgment, or decree whatever, as will more fully appear by the record and proceedings in said suit, reference being thereunto made in this answer for that purpose. This defendant further answering alleges, that the said suit in chancery had been put at issue, the plaintiff in this action and Arnold W. Taylor aforesaid conspired and colluded together for the purpose of defrauding this defendant and other persons who had there purchased, for a valuable consideration, a portion of the subject-matter of the said suit in chancery, and that the said plaintiff and Arnold W. Taylor, so conspiring together for the said purpose, on or about the twenty-third day of March, 1853, entered into an agreement to settle the said suit in chancery between themselves, and without permitting the court to pass upon the subject-matter in controversy upon the issue then joined in the said suit; and that by the said arrangement so made the said Taylor agreed to withdraw his defence to the said suit in chancery, and allow the bill of complaint in said suit to be taken as confessed by and against him, the said Taylor, and to suffer the said Steel to take a decree in said suit to the effect and extent of the whole prayer of the said Steel in his said bill of complaint; and that by the said arrangement so made the said Taylor agreed to sell and convey to the said Steel the property mentioned and described in the said bond or agreement in writing, and which was the subject-matter of the said suit in chancery, for a consideration and on terms which were distinct and different from the consideration and terms contained and agreed upon in said bond or agreement in writing; and that the said two conveyances in the complaint in the action mentioned and set forth, made by George Barstow, as the attorney in fact of Arnold W. Taylor, were made by virtue of

and to carry and consummate the said agreement made on the said twenty-third day of March, 1853, for the said distinct and different consideration, and on the said different terms, for the purpose of defrauding this defendant and others who were prior purchasers for a valuable consideration of a portion of the property so conveyed by the said Taylor as aforesaid.

Wherefore, this defendant says that the said two conveyances last mentioned and set forth in the complaint in this action are wholly null and void, so far as relates to this defendant.

And, therefore, this defendant demands the judgment of this court determining the title of the said property first mentioned and described in this answer, and claimed by this defendant to be in this defendant, and requiring the said plaintiff to release his said adverse claim to an estate or interest in the said property to this defendant; or in the event of his failure, or refusal so to do, that such judgment shall stand and be recorded in the place of such release; and perpetually enjoining and restraining the said plaintiff from further asserting or making such adverse claim to the said property, or intermeddling in any manner with the said property, or the title thereto, and requiring the said plain to deliver possession of the said property to this defendant, and giving to this defendant such other or further relief as the nature of the case may require, and to this court may seem just.

NORTH & SECOMB,
Attorneys for Defendant.

MINNESOTA TERRITORY,
County of Ramsey, ss:

William D. Garland, the defendant named in the foregoing answer, being duly sworn, says, that this answer is true of his own knowledge, except as to matters therein stated on his information or belief, and as to those matters he believes it to be true.

WILLIAM D. GARLAND.

Subscribed and sworn to this 25th day of July, A. D. 1854, before me,

GEORGE W. PRESCOTT,
Notary Public, Min. Ter.

MINNESOTA TERRITORY,
District court, 2d district, for the county of Ramsey.

FRANKLIN STEEL
against
JOHN ROLLINS and others.

The answer of John Rollins, one of the defendants in the above entitled action, to the complaint of the plaintiff herein, respectfully shows to this court:

That the said defendant claims to be and is the owner of one undivided half part of the following described real property, situate, lying, and being in the village of St. Anthony Falls, in said county, as

follows, to wit: Lots numbered one (1), two (2), three (3), and four (4), in block fifty-two (52); lot numbered six (6) in block twelve (12); lot numbered four (4) and six (6) in block fifty-three (53); lot numbered six (6) in block seventy-five (75); and lot numbered one (1) in block fifty-three (53.) That he is also the owner of one undivided half of the following real property in said village, to wit: lot ten (10) in block forty-eight (48); lots number one (1) and four (4) in block fifteen (15); lot five in block two (2); lot five (5) in block four (4); lot six (6) in block sixty-six (66); lot twelve (12) in block sixty-seven (67); lots five (5) and ten (10) in block seventy (70); lots eight (8) and nine (9) in block thirty-nine; lots one (1), three (3), and four (4), in block forty-six (46); and lots one (1), two (2,) and three (3), in block forty-seven (47.) That said property above described is a part of the property which is described in the bond or agreement in writing, and in the two deeds of conveyance last mentioned and set forth in the complaint of the plaintiff in this action, as will appear, reference being had to the plot of said town annexed to one of the said deeds; that the said property was granted and conveyed to the defendant, and his heirs and assigns, by the sheriff of said county of Ramsey, from deeds of conveyance duly executed, acknowledged and delivered, as follows: the deed, conveying the property first above described, was made and delivered on the fourth day of May, A. D. 1853, in pursuance of a sale of said property, duly made by the said sheriff, on the third day of March, 1853, upon and by virtue of a certain writ of execution duly issued out of this court on the thirteenth day of January, 1853, upon a judgment duly rendered and docketed in this court on said last-mentioned day, in an action in this court, wherein Benjamin Parker was plaintiff, and Arnold W. Taylor, the person mentioned in the complaint in this action was defendant, in favor of said plaintiff, Parker, and against said defendant, Taylor, for the sum of two hundred and ninety-one dollars and seven cents, which deed was duly recorded in the register for deeds of Ramsey county on the first day of June, 1853, in book "F" of deeds, on pages 255 and 256.

And the deeds, conveying the property last above described, were made and delivered on the first day of March, 1853, in pursuance of a sale of said property, duly made by the said sheriff on the 30th day of December, 1852, upon and by virtue of a certain writ of execution duly issued out of this court on the fifth day of November, 1852, upon a judgment duly rendered and docketed in this court, wherein John W. North was plaintiff, and the said Arnold W. Taylor was defendant, in favor of the said North and against the said Taylor, for the sum of five hundred and seventy-three dollars and ten cents, which deeds were duly recorded in the registry of deeds for Ramsey county on the 10th day of March, 1853, in book "E" of deeds, on pages 354, 355, and 356, 363 and 364, and 366 and 367.

And this defendant further answering denies, that the two conveyances last mentioned and set forth in the complaint in this action, or either of them, were made in pursuance of, or in conformity with, the

bond or agreement in writing, mentioned and set forth in said complaint, as is in said complaint alleged. And this defendant denies, that in the certain suit in chancery, mentioned in said complaint, the court ordered, adjudged or decreed the said conveyance last-mentioned and set forth in said complaint, or either of them, to be made, or that they, or either of them, were made in obedience to such decree as in the said complaint alleged.

And this defendant further denies, that in the suit of chancery the court has ever made any final order, judgment or decree whatever, as will more fully appear by the record and proceedings in said suit, reference being thereunto made in this answer for that purpose.

This defendant further answering alleges, that after the said suit *after the said suit* in chancery had been put at issue, and while it was at issue, the plaintiff in the action and Arnold W. Taylor aforesaid, conspired and colluded together for the purpose of defrauding this defendant and other persons, who had there purchased for a valuable consideration a portion of the subject-matter of the said suit in chancery.

And that the said plaintiff and Arnold W. Taylor, so conspiring and colluding together for the said purpose, on or about the twenty-third day of March, 1853, entered into an arrangement to settle the said suit in chancery between themselves, and without permitting the court to pass upon the subject-matter in controversy upon the issue there joined in the said suit; and that by the said arrangement so made the said Taylor agreed to withdraw his defence to the said suit in chancery, and allow the bill of complaint in said suit to be taken as confessed by and against him, the said Taylor, and to suffer the said Steel to take a decree in said suit to the effect and extent of the whole prayer of the said Steel in his said bill of complaint; and that by the said arrangement so made, the said Taylor agreed to sell and convey to the said Steel the property mentioned and described in the said bond or agreement in writing, and which was the subject-matter of the said suit in chancery, for a consideration, and on terms which were distinct and different from the consideration and terms contained and agreed upon in said bond or agreement in writing. And that the said two conveyances, with the complaint in this action mentioned and set forth, made by George Barstow, as the attorney in fact of Arnold W. Taylor, were made by virtue of, and to carry out consummate the said arrangements made, on the said twenty-third day of March, 1853, for the said distinct and different consideration, and on the said different terms, for the purpose of defrauding this defendant and others who were prior purchasers, for a valuable consideration, of a portion of the property so conveyed by the said Taylor as aforesaid.

Wherefore, this defendant says, that the said two conveyances last-mentioned and set forth in the complaint in this action, are wholly null and void, so far as relates to the defendant.

And therefore this defendant demands the judgment of the court, determining the title of the said property first mentioned and described

1026

in this answer, and claimed by this defendant, to be in this defendant, and require the said plaintiff to release his said adverse claim to an estate or interest in the said property to this defendant, or, in the event of his failure or refusal so to do, that such judgment shall stand and be recorded in the place of such release, and perpetually enjoining and restraining the said plaintiff from further asserting or making such adverse claim to the said property, or intermeddling in any manner with the said property, or the title thereto, and requiring the said plaintiff to deliver possession of the said property to this defendant, and giving to this defendant such other or further relief as the nature of the case may require and to this court may seem just.

NORTH & SECOMBE,
Attorneys for Defendant.

MINNESOTA TERRITORY,
County of Ramsey, ss:

John Rollins, the defendant named in the foregoing answer, being duly sworn, says, that this answer is true of his own knowledge, except as to matters herein stated on his information or belief, and as to those matters he believes it to be true.

JOHN ROLLINS.

Subscribed and sworn to, this 25th day of July, 1854, before me,
GEORGE W. PRESCOTT, *Notary Public.*

Territory of Minnesota, District Court, 2d district, for the county of Ramsey.

FRANKLIN STEEL
against
JOSEPH C. LAWRENCE and others.

The answer of *of* Joseph C. Lawrence, a defendant in the above action, to the complaint of the plaintiff, herein respectfully shows to this court, that the said defendant claims to be and is the owner of one undivided half part of the following described real property, situate, lying, and being in said county of Ramsey, to wit: Lot number six (6), in block number forty-eight (48), in the village of Saint Anthony Falls; and lot number one (1), in block number thirty-nine (39), in said village. That the said property above described is a part of the property which is described in the bond or agreement, in writing, and in the two deeds of conveyance last mentioned and set forth in the complaint of the plaintiff in this action, as will appear, reference being had to the plot of said town of St. Anthony Falls, annexed to one said deeds; that the said property was granted and conveyed to the defendant, and his heirs and his assigns, and to William Hanson, his heirs and assigns, by the sheriff of said county, on the first day of March, 1853, by two deeds of conveyance on that day executed, acknowledged, and delivered by said sheriff, in pursuance of a sale of said property, duly made by the said sheriff, on the thirteenth day of December, 1852,

upon and by virtue of a certain writ of execution, duly issued out of this court on the fifth day of November, 1852, upon a judgment duly rendered and docketed in this court, on the second day of November, 1852, in an action in this court, wherein John W. North was plaintiff, and Arnold W. Taylor, the person mentioned in the complaint of this action, was defendant, in favor of said plaintiff, John W. North, and against the said defendant, Arnold W. Taylor, for the sum of five hundred and seventy-three dollars and ten cents; which deed was duly recorded in the register of deeds for Ramsey county aforesaid, this defendant deed, on the 19th day of April, 1853, in book "F" of deeds, on pages 160 and 161.

And said lot, No. one (1), in block thirty-nine (39), was conveyed by said sheriff to William Hanson, by virtue of the same sale, execution, and judgment above set forth by deed bearing the same date as that herein before mentioned. And on the twenty-third day of January, 1854, the said William Hanson and Hannah, his wife, for a valuable consideration by deed duly executed, remised, released, and quit-claimed unto this defendant and his heirs and assigns, the said lot No. one, in block No. thirty-nine (39), in said village.

And this defendant further answering denies, that the two conveyances last mentioned *last mentioned* and set forth in the complaint in this action, or either of them, were made in pursuance of, or in conformity with the bond or agreement, in writing, mentioned and set forth in said complaint, as is in said complaint alleged.

And this defendant denies, that in the certain suit in chancery mentioned in said complaint, the court ordered, adjudged, or decreed the said conveyance last mentioned and set forth in said complaint, or either of them, to be made, or that they, or either of them, were made in obedience to such decree, as in the said complaint alleged.

And this defendant further denies, that in the said suit in chancery the court has ever made any final order, judgment, or decree whatever, as will more fully appear by the record and proceedings in said suit, reference being thereunto made in this answer for that purpose.

This defendant further answering alleges, that after the said suit in chancery had been put at issue, and while it was at issue, the plaintiff in this action and Arnold W. Taylor, aforesaid, conspired and colluded together for the purpose of defrauding this defendant, and other persons who had there purchased, for a valuable consideration, a portion of the subject-matter of the said suit in chancery.

And that the said plaintiff and Arnold W. Taylor, so conspiring and colluding together for the said purpose, on or about the twenty-third day of March, 1853, entered into an agreement to settle the said suit in chancery between themselves, and without permitting the court to pass upon the subject-matter in controversy upon the issue then joined in the said suit.

And that, by the said arrangement so made, the said Taylor to withdraw his *his* defence to the suit in chancery, and allow the bill of complaint in said suit to be taken as confessed by and against him,

the said Taylor, and to suffer the said Steel to take a decree in said suit to the effect and extent of the whole prayer of the said Steel in his said bill of complaint.

And that by the said arrangement, so made, the said Taylor agreed to sell and convey to the said Steel the property mentioned and described in the said bond or agreement in writing, and which was the subject-matter of the said suit in chancery, for a consideration, and on terms which were distinct and different from the consideration and terms contained and agreed upon in said bond agreement in writing.

And that the said two conveyances in the complaint in this action mentioned and set forth, made by George Barstow, as the attorney in fact of Arnold W. Taylor, were made by virtue of, and to carry out and consummate the said agreement made on the said *on the said* twenty-third day of March, 1853, for the said different and distinct consideration, and on the said different terms, for the purpose of defrauding this defendant, and others who were prior purchasers, for a valuable consideration, of a portion of the property so conveyed by the said Taylor, as aforesaid.

And therefore this defendant demands the judgment of this court determining the title of the said property first mentioned and described in this answer, and claimed by this defendant, to be in the defendant, and requiring the said plaintiff to release his said adverse claim to an estate or interest in the said property to this defendant; or in the event of his failure or refusal so to do, that such judgment shall stand, and be recorded in the place of such release; and perpetually enjoining and restraining the said plaintiff from further asserting, or making such adverse claim to the said property, or intermeddling in any manner with the said property, or the title thereto; and requiring the said plaintiff to deliver possession of the said property to this defendant; and giving to this defendant such other or further relief as the nature of the case may require, and to this court may seem just.

NORTH & SECOMB,
Attorneys for Defendant.

MINNESOTA TERRITORY,
County of Ramsey, ss:

Joseph C. Lawrence, the defendant named in the foregoing answer, being duly sworn, says, that this answer is true, of his own knowledge, except as to matters therein stated on his information or belief; and as to those matters, that he believes it to be true.

J. C. LAWRENCE.

Subscribed and sworn to, this 24th day of July, 1854, before me.

GEORGE W. PRESCOTT,
Notary Public, Min. Ter.

MINNESOTA TERRITORY,
District court, 2d district, for the county of Ramsey.

FRANKLIN STEEL
against
ELI C. JONES AND OTHERS.

The answer of Eli C. Jones, one of the defendants in this action, to the complaint of the plaintiff herein, respectfully shows to this court: That this defendant claims to be, and is, the owner of one undivided half part of the following described real property, lying and situate in said county of Ramsey, to wit: Lots numbered one (1), two (2), three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), in block twenty-six (26); lot four (4), in block twenty-eight (28); lot eighteen (18), nineteen (19) and twenty (20), in block thirty-nine (39); lot three (3), in block fifty-three (53); lots three (3) and ten (10), in block seventy-five (75); lot six (6), in block seventy-six (76); lots two (2), seven (7) and eight (8), in block four (4); and lots five (5) and six (6), in block twenty-two (22); all in the village of St. Anthony Falls.

That the said property is a part of the property which is described in the bond or agreement, in writing, and in the two deeds of conveyance last mentioned and set forth in the complaint of the plaintiff in this action, as will appear, reference being had to the plat of said town of St. Anthony Falls, annexed to one of said deeds.

That the title of this defendant to the above-described property is as follows, to wit: The above-mentioned undivided half of lots in block twenty-six (26) and twenty-eight (28) were conveyed to this defendant, on the sixteenth day of May, A. D. 1854, by the sheriff of said county; and the said undivided half of lots in block twenty-two (22) were conveyed to one Calvin M. Jenkins, by the sheriff of said county of Ramsey, on or about the twenty-sixth day of May, 1853, by two deeds of conveyance, duly executed, acknowledged, and delivered to this defendant and to said Jenkins, by said sheriff, in pursuance of a sale of said property by said sheriff, duly made on the 24th day of March, 1853, upon and by virtue of a certain writ of execution duly issued out of this court, on the third day of February, 1853, upon a judgment duly rendered and docketed in this court on said last-mentioned day, in an action in this court, wherein Isaac Gilpatrick was plaintiff, and Arnold W. Taylor, the person mentioned in the complaint in this action, was defendant, in favor of said Gilpatrick and against said Taylor, for the sum of eleven hundred and twenty-two dollars and $\frac{11}{100}$ dollars; and the said Calvin W. Jenkins, on the 31st day of December, 1853, by his deed of conveyance on that day duly executed, bargained, sold, and quit-claimed to this defendant, all his right, title and interest in and to the said property, so sold to him by the said sheriff, as aforesaid.

And the undivided half above-mentioned lots, in blocks thirty-nine (39), fifty-three (53), seventy-five (75) and seventy-six (76), were con-

veyed to this defendant by the said sheriff, by deed duly executed, acknowledged, and delivered on the fourth day of May, 1853, in pursuance of a sale of said property, duly made by said sheriff on the third day of March, 1853, upon and by virtue of a certain writ of execution, duly issued out of this court on the thirteenth day of January, 1853, upon a judgment duly rendered and docketed in the court on the eighth day of January, 1853, in an action in this court wherein Benjamin Parker was plaintiff, and the said Arnold W. Taylor was defendant, in vor of said Parker and against said Taylor, for the sum of two hundred and ninety-one dollars and $\frac{1}{100}$ dollars.

And the said undivided half of lots in block four (4), above described, were granted and conveyed by said sheriff to John W. North, by deeds duly executed, acknowledged, and delivered on the first day of March, 1853, in pursuance of a sale of said property, duly made by the said sheriff on the thirteenth day of December, 1852, upon and by virtue of a certain writ of execution duly issued out of the court on the fifth (5) day of November, 1852, upon a judgment duly rendered and docketed in the court on the 2nd day of November, 1852, in an action in this court, wherein the said North was plaintiff and Arnold W. Taylor aforesaid was defendant, in favor of said North and against said Taylor, for the sum of five hundred and seventy-three dollars and ten cents; and the said John W. North and Ann S. North, his wife, on the third day of March, 1853, by their deeds of that date, sold and conveyed unto this defendant all their right, title, and interest in and to said property so conveyed by said sheriff to said North as above set forth, which deeds of conveyance were duly recorded in the register of deeds for Ramsey county aforesaid, and this said defendant is in the actual possession of said lots five (5) and six (6) in block twenty-two, (22;) and he denies that the said plaintiff *has* possession thereof, as in said complaint alleged.

And this defendant further answering denies, that the two conveyances last mentioned and set forth in the complaint in this action, or either of them, were made in pursuance of or in conformity with the bonds or agreement in writing mentioned and set forth in said complaint, as in the said complaint alleged.

And this defendant denies, that in the certain suit in chancery mentioned in said complaint, the court ordered, adjudged, or decreed the said conveyance last mentioned and set forth in said complaint, or either of them, to be made, or that they or either of them were made in obedience to such decree, as is in said complaint alleged.

And this defendant further denies, that in the said suit in chancery this court has ever made any final order, judgment, or decree whatever, as will more fully appear by the record and proceedings in said suit, reference being thereunto made in this answer for that purpose.

This defendant further answering alleges, that after the said suit in chancery had been put at issue, and while it was at issue, the plaintiff

in this action and Arnold W. Taylor aforesaid conspired and colluded together for the purpose of defrauding this defendant and other persons who had there purchased for a valuable consideration a portion of the subject-matter of the said suit in chancery; and that the said plaintiff and Arnold W. Taylor so conspiring and colluding together for the said purpose, on or about the twenty-third day of March, 1853, entered into an arrangement to settle the said in chancery between themselves, and without permitting this court to pass upon the subject-matter in controversy upon the issue then joined in the said suit; and that by the said arrangement so made the said Taylor agreed to withdraw his defence to the said suit in chancery, and allow the bill of complaint in said suit to be taken as confessed by and against him, the said Taylor, and to suffer the said Steel to take a decree in said suit to the effect and extent of the whole prayer of the said Steel in his said bill of complaint; and that by the said arrangement so made, the said Taylor agreed to sell and convey to the said Steel the property mentioned and described in the said bond or agreement in writing, and which was the subject-matter of the said suit in chancery, for a consideration and on terms which were distinct and different from the consideration and terms contained and agreed upon in said bond or agreement in writing; and that the said *to* conveyances in the complaint in this action mentioned and set forth, made by George Barstow as the attorney in fact of Arnold W. Taylor, were made by virtue of and to carry out and consummate the said agreement made on the said 23d day of March, 1853, for the said distinct and different consideration and on the said different terms, for the purpose of defrauding this defendant and others who were prior purchasers for a valuable consideration of a portion of the property, so conveyed by the said Taylor as aforesaid.

Wherefore this defendant says, that the said two conveyances last mentioned, and set forth in the complaint in this action, are wholly null and void, so far as relates to this defendant; and, therefore, this defendant demands judgment of this court, determining the title of the said property first mentioned and described in this answer and claimed by this defendant to be in this defendant, and requiring the said plaintiff to release his said adverse claim to an estate or interest in the said property to this defendant; or, in the event of his failure or refusal so to do, that such judgment shall stand and be recorded in the place of such release, and perpetually enjoining and restraining the said plaintiff from further asserting or making such adverse claim to the property, or intermeddling in any manner with the said property or the title thereto, and requiring the said plaintiff to deliver possession of the said property to this defendant, and giving to this defendant such other or further relief as the nature of the case may require and to this court may seem just.

NORTH & SECOMB,
Attorneys for Defendant.

MINNESOTA TERRITORY,
County of Ramsey, ss:

Eli C. Jones, the defendant in the foregoing answer, being duly sworn, says, that this answer is true of his own knowledge except as to matters herein stated on his information and belief; and, as to those matters, that he believes it to be true.

ELI C. JONES.

Subscribed and sworn to before me this twenty-fourth day of July A. D., 1854.

GEORGE W. PRESCOTT,
Notary Public.

MINNESOTA TERRITORY,
District Court, 2nd district, for the county of Ramsey.

FRANKLIN STEELE
against
SUMNER W. FARNHAM and CHARLES F. STIMSON, and others. } Answer.

The answer of Sumner W. Farnham and Charles F. Stimson, defendants in the above entitled action, to the complaint of the plaintiff herein, respectfully shows to this court, that the said defendants claim to be and are the owners of one undivided half part of the following described property, situate, lying and being in said county, to wit: the sawmills in the bed of the Mississippi river, opposite block number forty-seven (47), in the town of Saint Anthony Falls, as surveyed by William R. Marshall, known and designated as sawmills numbers five (5) and six (6) in the block of said mills; and also the following lots in the said town of said St. Anthony Falls, to wit: lots eight (8) and nine (9) in block seventy-three (73); lot one (1) in block seventy-four (74); lots four (4), five (5), nine (9) and ten (10) in block sixty-one (61); lot seven (7) in block sixty-four (64); lots eight (8) and nine (9) in block sixty-four (64); lots three (3) and seven (7) in block seventy-three (73); lot five (5) in block twelve (12); lots two (2), five (5) and ten (10) in block fifty-three (53).

And the defendant, Charles F. Stimson, is the owner of one undivided half of lots eleven (11) and twelve (12) in block fifty (50), in said town.

And the defendant, Sumner W. Farnham, is the owner of one undivided half of lot ten (10) in said block fifty (50); lots one (1), two (2), six (6) and twelve (12) in block seven (7); lots six (6), seven (7), nine (9) and ten (10) in block eight (8); lots four (4) and ten (10) in block sixty-seven (67); lots eight (8) and nine (9) in block sixty-eight (68); lots six (6) and seven (7) in block seventy (70); and lot seventeen (17) in block thirty-nine (39), and lot nine (9) in block forty-eight (48), in said town.

That the titles of these defendants to the above-described property are derived as follows: The property above described as belonging to

these *defends*, (Farnham and Stimson,) except said undivided half of lot five (5) in block twelve (12), and lots two (2), five (5) and ten (10) in block fifty-three (53), was conveyed to these defendants, their heirs and assigns, by the sheriff of the county of Ramsey, by four deeds of conveyance, duly executed, acknowledged and delivered on the first day of March, 1853, in pursuance of a sale of said property, duly made by said sheriff on the thirty-first day of December, 1852, upon and by virtue of a certain writ of execution, duly issued out of this court on the twelfth day of November, 1852, upon a judgment duly rendered and docketed in this court on the eighth day of November, 1852, in an action in this court, wherein these defendants were plaintiffs and Arnold W. Taylor, the person mentioned in the complaint in this action, was defendant, in favor of said plaintiffs, and against said Taylor, for the sum of four hundred and seventy-one $\frac{8}{100}$ dollars; and said undivided half of said lot five (5) in block twelve (12), and lots two (2), five (5) and ten (10) in block fifty-three (53), was conveyed to these defendants jointly; and the said undivided half of lot ten (10), in block fifty (50), was conveyed to this defendant, Sumner W. Farnham; and the said undivided half of lots eleven and twelve, in block fifty, was conveyed to this defendant, Charles F. Stimson, all by said sheriff, by three separate deeds, dated, executed, acknowledged and delivered on the fourth day of May, 1853, in pursuance of a sale of said property, duly made by said sheriff on the third day of March, 1853, under and by virtue of a writ of execution duly issued out of this court on the 13th day of January, 1853, upon a judgment duly rendered and docketed in this court on the last mentioned day, in an action in this court, wherein Benjamin Parker was plaintiff and the said Arnold W. Taylor was defendant, in favor of said plaintiff, Parker, and against said Taylor, for the sum of two hundred and ninety-one dollars and seven cents; and the undivided half of lots above mentioned, in blocks seven (7), eight (8), sixty-seven (67), sixty-eight (68), seventy (70) and thirty-nine (39) was conveyed to Mary P. Wilson, and the undivided half of lot nine, in block forty-eight, was conveyed to Samuel Estes, by said sheriff, by two deeds of conveyance, duly executed, acknowledged and delivered on the first day of March, 1853, in pursuance of a sale of said property, duly made by said sheriff on the thirtieth day of December, 1852, under and by virtue of a writ of execution duly issued out of this court on the fifth day of November, 1852, upon a judgment in this court, duly rendered and docketed on the 2d day of November, 1852, in an action in this court, wherein John W. North was plaintiff and the said Taylor was defendant, in favor of said North and against said Taylor, for the sum of five hundred and seventy-three dollars and ten cents; and the said Mary P. Wilson, and Joseph P. Wilson, her husband, on the 16th day of March, 1853, by their deed, duly executed, remised, released and forever quit-claimed to this defendant, Farnham, all their right, title and interest in and to the property so conveyed to the said Mary P. Wilson by said sheriff as aforesaid; and the said Samuel Estes, on the 10th day of February,

1854, by his deed, duly executed, remised, released and quit-claimed to this defendant, Farnham, his heirs and assigns, all his (the said Estes's) right, title and interest in and to the said property so conveyed to him by the said sheriff as aforesaid; which said deeds above described were duly recorded in the registry of deeds for said county of Ramsey.

That the property above described and claimed by these defendants, and each of them, is a part of the property which is described in the bond or agreement in writing, and in the two deeds of conveyance last mentioned and set forth in said complaint.

And these defendants further answering deny, that the two conveyances last mentioned and set forth in the complaint in this action, or either of them, were made in pursuance of, and in conformity with, the bond or agreement in writing mentioned and set forth in said complaint, as in said complaint alleged.

And these defendants deny, that in the certain suit in chancery mentioned in said complaint, the court ordered, adjudged, or decreed the said conveyance last mentioned and set forth in said complaint, or either of them, to be made, or that they, or either of them, were made in obedience to such decree, as is in the said complaint alleged.

And these defendants further deny, that in the said suit in chancery the court has ever made any final order, judgment, or decree whatever, as will more fully appear by the record and proceedings in said suit, reference being thereunto made in this answer for that purpose.

These defendants further answering allege, that after the said suit in chancery had been put at issue, and while it was at issue, the plaintiff in this action, and Arnold W. Taylor aforesaid, conspired and colluded together for the purpose of defrauding these defendants and other persons who had then purchased, for a valuable consideration, a portion of the subject-matter of the said suit in chancery; and that the said plaintiff, and Arnold W. Taylor, so conspiring and colluding together for the said purpose, on or about the 23d day of March, 1833, entered into an arrangement to settle the said suit in chancery between themselves, and without permitting the court to pass upon the subject-matter in controversy upon the issue then joined in the said suit; and that by the said arrangement so made, the said Taylor agreed to withdraw his defence to the said suit in chancery, and allow the bill of complaint in said suit to be taken as confessed by and against him, the said Taylor, and to suffer the said Steele to take a decree in said suit to the effect and extent of the whole prayer of the said Steele in his said bill of complaint; and that by the said arrangement so made, the said Taylor agreed to sell and convey to the said Steele the property mentioned and described in the said bond or agreement in writing, and which was the subject-matter of the said suit in chancery, for a consideration, and on terms which were distinct and different from the consideration and terms contained and agreed upon in said bond or agreement in writing; and that the said two conveyances in the complaint in this action mentioned and set forth, made by Geo. Barstow, as the attorney in fact of Arnold W. Taylor, were made by virtue of, and

to carry out and consummate the said agreement made on the said twenty-third day of March, 1853, for the said distinct and different consideration, and on the said different terms, for the purpose of defrauding these defendants and others, who were prior purchasers for a valuable consideration of a portion of the property so conveyed by the said Taylor as aforesaid.

Wherefor these defendants say, that the said two conveyances last mentioned and set forth in the complaint in this action are wholly null and void, so far as relates to these defendants. And therefore these defendants demand the judgment of this court determining the title of the said property first mentioned and described in this answer, and claimed by these defendants to be in these defendants, as alleged in this answer, and requiring the said plaintiff to release his said adverse claim to an estate or interest in said property to these defendants as aforesaid; or, in the event of his failure so to do, that such judgment shall stand and be recorded in place of such release, and perpetually enjoining and restraining the said plaintiff from further asserting or making such adverse claim to the said property, or intermeddling in any manner with the said property or the title thereto, and requiring the said plaintiff to deliver possession of the said property to these defendants, and giving to these defendants such other and further relief as the nature of the case may require, and to this court may seem just.

NORTH & SECOMBE,
Att'ys for Def'ts.

MINNESOTA TERRITORY,
County of Ramsey, ss:

Sumner W. Farnham and Charles F. Stimson, the above named defendants, being duly sworn, each for himself says, that this answer is true of his own knowledge except as to matters therein stated on his information or belief, and as to those matters that he believes it to be true.

SUMNER W. FARNHAM,
C. F. STIMSON.

Subscribed and sworn to before me, this 24th day of July, A. D. 1854.

GEORGE W. PRESCOTT,
Notary Public.

The foregoing answer endorsed as follows:

District Court, 2d district, County of Ramsey—Franklin Steel agst. Farnham and Stimson and others.—Answer—Filed July 31st, 1854.

GEO. W. PRESCOTT,
Dept. Clk.

NORTH & SECOMBE, *Defts. Attys.*

Due service of the copy of the within, and also of answer of Z. E. B. Nash, Geo. B. Dutton, and M. W. Getchell, E. C. Jone, Wm. H.

Cole, W. H. Townsend, Samuel Estor, J. C. Lawrence, O. W. Stoughton, Jas. M'Cann, Benjamin Parker, and J. La Croix, in the same suit hereby admitted, this 31st day of July, 1854.

RICE, HOLLINSHEAD, & BECKER,
Att'ys for Pl'ff.

MINNESOTA TERRITORY,
District Court, 2d district, for the county of Ramsey.

FRANKLIN STEELE
against
J. LA CROIX and others.

The answer of J. La Croix, defendant in the above action, to the compl't of the plaintiff herein, respectfully shows to this court, that the said defendant claims to be, and is, the owner of one undivided half of the following described real property, situate, lying, and being in the village of St. Anthony Falls, in said county of Ramsey, to wit: lots numbered three (3) and four (4) in block three (3), and lot ten (10) in block four (4).

That the said property, above described, is a part of the property which is described in the bond or agreement in writing and in the two deeds of conveyance last mentioned, and set forth in the complaint of the plaintiff in this action, as will appear, reference being had to the plot of said town of St. Anthony Falls, annexed to one of said deeds.

That the said property was granted and conveyed to this defendant, and his heirs and assigns, by the sheriff of said county, on the first day of March, 1853, by a deed of conveyance on that day duly executed, acknowledged and delivered by the said sheriff, in pursuance of a sale of the said property duly made by the said sheriff on the 30th day of December, 1852, upon and by virtue of a certain writ of execution duly issued out of this court on the 2nd day of November, 1852, upon a judgment duly rendered and docketed in this court on the 2nd day of November, 1852, in an action in this court, wherein John W. North was plaintiff, and Arnold W. Taylor, the person mentioned in the compl't in this action, was defendant, in favor of said plaintiff, John W. North, and against the said defendant, Arnold W. Taylor, for the sum of five hundred and seventy-three dollars and ten cents, which deed was duly recorded in the registry of deeds for Ramsey county, on the 9th day of June, 1853, in book "E" of deeds, on pages 204 and 205.

And this defendant further answering denies, that the two conveyances last mentioned and set forth in the complaint in this action, or either of them, were made in pursuance of or in conformity with the bond and agreement in writing, mentioned and set forth in said complaint, as is in said complaint alleged.

And this defendant denies, that in the certain suit in chancery mentioned in said complaint, the court ordered, adjudged, or decreed the

said conveyances last mentioned and set forth in said complaint, or either of them, to be made, or that they or either of them were made in obedience to such decree, as is in the said complaint alleged.

And this defendant further denies, that in the said suit in chancery the court has ever made any final order, judgment or decree whatever, as will more fully appear by the record and proceedings in said suit, reference being thereunto made in this answer for that purpose.

This defendant further answering alleges, that after the said suit in chancery had been put at issue and while it was at issue, the plaintiff in this action, and Arnold W. Taylor, aforesaid, conspired and colluded together for the purpose of defrauding this defendant and other persons, who had then purchased for a valuable consideration a portion of the subject-matter of the said suit in chancery. And that the said plaintiff and Arnold W. Taylor, so conspiring and colluding together for the said purpose, on or about the twenty-third day of March, 1853, entered into an arrangement to settle the said suit in chancery between themselves, and without permitting the court to pass upon the subject-matter in controversy upon the issue then joined in the said suit.

And that by the said arrangement so made, the said Taylor agreed to withdraw his defence to the said suit in chancery, and allow the bill of complaint in said suit to be taken as confessed by and against him, the said Taylor, and to suffer the said Steele to take a decree in said suit to the effect and extent of the whole prayer of the said Steele in his said bill of complaint.

And that by the said arrangement so made, the said Taylor agreed to sell and convey to the said Steele the property mentioned and described in the said bond or agreement in writing, and which was the subject-matter of the said suit in chancery, for a consideration and on terms which were distinct and different from the consideration and terms contained and agreed upon in said bond or agreement in writing. And that the said two conveyances in the complaint in this action mentioned and set forth, made by George Barstow as the attorney in fact of Arnold W. Taylor, were made by virtue of and to carry out and consummate the said agreement made on the said twenty-third day of March, 1853, for the said distinct and different consideration and on the said different terms, for the purpose of defrauding this defendant and others, who were prior purchasers for a valuable consideration of a portion of the property so conveyed by the said Taylor as aforesaid.

Wherefore this defendant says that the said two conveyances last mentioned and set forth in the complaint in this action are wholly null and void, so far as relates to this defendant.

And therefore this defendant demands the judgment of this court determining the title of the said property first mentioned and described in this answer and claimed by this defendant, to be in this defendant; and requiring the said plaintiff to release his said adverse claim to an estate or interest in the said property to this defendant, or in the event of his failure or refusal so to do, that such judgment shall stand and be recorded in the place of such release; and perpetually

enjoining and restraining the said plaintiff from further asserting or making such adverse claim to the said property, or intermeddling in any manner with the said property or the title thereto, and requiring the said plaintiff to deliver possession of the said property to this defendant, and giving to this defendant such other or further relief as the nature of the case may require, and to this court may seem just.

NORTH & SECOMBE,
Attorneys for Deft.

MINNESOTA TERRITORY,
County of Ramsey, ss:

J. La Croix, the defendant above named, being duly sworn, says, that this answer is true of his own knowledge, except to the matters herein stated on his information or belief; and as to those matters that he believes it to be true.

JULE LA CROIX.

Subscribed and sworn to, 31st day of July, A. D. 1854, before me,
GEO. W. PRESCOTT,
Notary Public.

Endorsed: "District Court, 2d district, county of Ramsey—Franklin Steel against J. La Croix and others—Answer 711.

NORTH & SECOMBE,
Att'ys for Deft.

Filed July 31st, 1854.

GEO. W. PRESCOTT,
Dept. Clerk."

MINNESOTA TERRITORY,
District Court, 2d district, for the county of Ramsey.

FRANKLIN STEELE
against
ELEANOR KING and others.

The answer of Eleanor F. King, one of the defendants in the above entitled action, to the complaint of the plaintiff, herein respectfully shows to this court:

That this defendant claims to be, and is, the owner of one undivided half part of the following described real property, lying and situate in said county of Ramsey, to wit: lots three (3), in block one (1); lots five (5), six (6), eight (8) and ten (10), in block three (3), and lots one (1), three (3), four (4) and six (6), in block four (4), all in the village of St. Anthony Falls.

That the said property above described is a part of the property which is described in the bond or agreement in writing, and in the two deeds of conveyance last mentioned and set forth in the complaint of the plaintiff in this action, as will appear, reference being had to the plot of said town of St. Anthony Falls, annexed to one of said deeds.

That the said property was granted and conveyed to this defendant, his heirs and assigns, by the sheriff of said county, on the first day of March, 1853, by two deeds of conveyance on that day, duly executed, acknowledged and delivered by said sheriff, in pursuance of a sale of said property duly made by the said sheriff on the thirtieth day of December, 1852, upon and by virtue of a certain writ of execution duly issued out of this court on the fifth day of November, 1852, upon a judgment duly rendered and docketed in this court on the second day of November, 1852, in an action in this court, wherein John W. North was plaintiff, and Arnold W. Taylor, the person mentioned in the complaint in this action, was defendant, in favor of said North, and against said Taylor, for the sum of five hundred and seventy-three dollars and ten cents, which deeds were duly recorded in the registry of deeds for Ramsey county aforesaid, on the 14th day of March, 1853, in book "E" of deeds, at pages 371, 372 and 373.

And this defendant further answering denies, that the two conveyances last mentioned and set forth in the complaint in this action, or either of them, were made in pursuance of or in conformity with the bond or agreement in writing, mentioned and set forth in said complaint, as in said complaint alleged. And this defendant denies that in the certain suit in chancery mentioned in said complaint, the court ordered and adjudged, or decreed, the said conveyance last mentioned and set forth in said complaint, or either of them, to be made, or that they or either of them were made in obedience to such decree, as in said complaint alleged.

And this defendant further denies, that in the suit in chancery the court has ever made any final order, judgment or decree whatever, as will more fully appear by the record and proceedings in said suit, reference being thereunto made in this answer for that purpose.

This defendant further answering alleges, that after the said suit in chancery had been put at issue, and while it was at issue, the plaintiff in this action and Arnold W. Taylor aforesaid conspired and colluded together for the purpose of defrauding this defendant and other persons who had then purchased for a valuable consideration a portion of the subject-matter of said suit in chancery. And that the said plaintiff and Arnold W. Taylor, so conspiring and colluding together for the said purpose, on or about the 23d day of March, 1853, entered into an arrangement to settle the said suit in chancery between themselves, and without permitting the court to pass upon the subject-matter in controversy upon the issue then joined in the said suit, and that by the said arrangement so made the said Taylor agreed to withdraw his defence to the said suit in chancery, and allow the bill of complaint in said suit to be taken as confessed by and against him, the said Taylor, and to suffer the said Steel to take a decree in said suit to the effect and extent of the whole prayer of the said Steel in his said bill of complaint; and that by the said arrangement so made, the said Taylor agreed to sell and convey to the said Steel the property mentioned and described in the said bond and agreement in writing, and which was the subject-matter

of the said suit in chancery, for a consideration and on terms which were distinct and different from the consideration and terms contained and agreed upon in said bond and agreement in writing.

And that the said two conveyances in the complaint in this action mentioned and set forth, made by George Barstow as the attorney in fact of Arnold W. Taylor aforesaid, were made by virtue of and to carry out and consummate the said agreement, made on the said twenty-third day of March, 1853, for the said distinct and different consideration, and on the said different terms, for the purpose of defrauding this defendant, and others who were prior purchasers for a valuable consideration, of a portion of the property so conveyed by the said Taylor as aforesaid.

Wherefore this defendant says that the said two conveyances last mentioned and set forth in the complaint in this action, are wholly null and void, so far as relates to this defendant; and therefore this defendant demands the judgment of this court determining the title of the said property first mentioned and described in this answer, and claimed by this defendant, to be in this defendant, and requiring said plaintiff to release his said adverse claim to an estate or interest in the said property to this defendant, or in the event of his failure, or refusal so to do, that such judgment shall stand and be recorded, in place of such release, and perpetually enjoining and restraining the said plaintiff from further asserting or making such adverse claim to the said property, or intermeddling in any manner with the said property or the title thereto, and requiring the said plaintiff to deliver possession of the said property to this defendant, and giving to this defendant such other and further relief as the nature of the case may require, and to this court may seem just.

NORTH & SECOMBE,
Att'ys for Deft.

TERRITORY OF MINNESOTA,
County of Ramsey, ss:

Eleanor F. King, one of the defendants in the above action, being duly sworn, says, that the foregoing answer is true of her own knowledge, except as to matters therein stated to be on information and belief, and as to those matters that she believes it to be true.

ELEANOR F. KING.

Subscribed and sworn to before me this 24th day of July, A. D. 1854.

GEO. W. PRESCOTT,
Notary Public.

Endorsed: "Dist. Court, 2d district, Ramsey county—Franklin Steel against E. F. King and others—Answer 711—Filed July 31, 1854—Geo. W. Prescott, dep. clerk—North & Secombe, defts. att'ys."

MINNESOTA TERRITORY,
District court, 2nd district, for the county of Ramsey.

FRANKLIN STEELE
against
SAMUEL ESTES and others.

The answer of Samuel Estes, one of the defendants in the above action, to the complaint of the plaintiff herein, respectfully shows to this court, that the said defendant claims to be, and is, the owner of one undivided half of the following described property, situate, lying and being in said county of Ramsey, and described as follows, to wit: The sawmills in the bed of the Mississippi river, east of Hennepin and Nicollet islands, and opposite block numbered forty-seven, in the village of St. Anthony Falls, known and designated as saws number one (1), two (2), three (3), and four (4), numbering from the east end of said block of sawmills; also lots numbered one (1), two (2), and ten (10), in block sixty-four (64); lots four (4), five (5), and six (6), in block seventy-three (73), and lots two (2), three (3), ten (10), and thirteen (13), in block thirty nine (39), all in the village of St. Anthony Falls. That the said property above described is a part of the property which is described in the bond or agreement in writing, and in the two deeds of conveyance last mentioned and set forth in the complaint of the plaintiff in this action, as will appear, reference being had to the plot of said town of St. Anthony Falls, annexed to one of said deeds. That the title of this defendant to the property above described was derived, and is as follows, to wit:

The undivided half of the sawmills above referred to and described was conveyed to this defendant, his heirs and assigns, by a deed of conveyance duly executed, acknowledged and delivered, by the sheriff of the said county of Ramsey, on the 9th day of May, 1853, in pursuance of a sale of the said premises, duly made by the said sheriff, on the twenty-second day of April, 1853, upon and by virtue of a certain writ of execution duly issued out of this court on the fourth day of March, 1853, upon a judgment duly rendered and docketed in this court, on said last mentioned day, in an action in this court, wherein this defendant Estes was plaintiff, and Arnold W. Taylor, the person mentioned in the complaint in this action, was defendant, in favor of said plaintiff Estes, and against said defendant Taylor, for the sum of five hundred and twenty-seven dollars eighty cents. The undivided half of lots one (1), two (2), and ten (10), in block sixty-four (64), and lots four (4), five (5), and (6), in block seventy-three (73), above described, was conveyed to this defendant, his heirs and assigns, by one other deed of conveyance duly executed, acknowledged and delivered by said sheriff, on the first day of March, 1853, in pursuance of a sale of said property duly made by said sheriff, on the thirty-first day of December, 1852, upon and by virtue of a certain writ of execution duly issued out of this court, and to him directed on the 12th day of November, 1852, upon a judgment duly rendered and docketed in this

court, on the eighth day of November, 1852, in an action in this court, wherein Sumner W. Farnham and Charles F. Stimson were plaintiffs, and the said Arnold W. Taylor was defendant, in favor of said plaintiffs, and against said defendant Taylor, for the sum of four hundred and seventy-one dollars and eighty-two cents.

And the undivided half of lots two (2), three (3), ten (10), and thirteen (13), in block thirty-nine (39), was conveyed to Z. E. B. Nash, his heirs and assigns, by the said sheriff, on the first day of March, 1853, by a deed of conveyance duly executed, acknowledged and delivered by the said sheriff in pursuance of a sale of said property duly made by him to said Nash, on the thirtieth day of December, 1852, upon and by virtue of a certain writ of execution to him directed, duly issued out of this court, on the 2nd day of November, 1852, upon a judgment duly rendered and docketed in this court on said last mentioned day, in an action wherein John W. North was plaintiff, and the said Taylor was defendant, in favor of said North, and against said Taylor, for the sum of five hundred and seventy-three dollars and ten cents. And the said Nash afterwards, on the same day, by deed duly executed, acknowledged and delivered, remised, released, and forever quit-claimed to this defendant, his heirs and assigns, all his right, title and interest in and to said property so conveyed to him by said sheriff, as last above described; which deeds were recorded in the Ramsey county registry of deeds; the first deed above described on the 17th day of October, 1853, in book "H" of deeds, page 54; the second deed above described, on the 18th day of October, 1853, in book "H" of deeds, page 57; the third deed above described, on the 7th day of March, 1853, in Book "E" of deeds, on pages 327 and 328; and the last deed above described, on the 9th day of March, 1853, in book "E" of deeds, on page 329.

And this defendant further answering denies, that the two conveyances last mentioned and set forth in the complaint in this action, or either of them, were made in pursuance of, or in conformity with, the bond or agreement in writing, mentioned and set forth in said complaint, as is in said complaint alleged.

And this defendant denies, that in the certain suit in chancery mentioned in said complaint, the court ordered, adjudged, or decreed the said conveyances last mentioned and set forth in said complaint, or either of them, to be made, or that they, or either of them, were made in obedience to such decree, as is in the said complaint alleged.

And this defendant further denies, that in the said suit in chancery the court has ever made any final order, judgment, or decree whatever, as will more fully appear by the record and proceedings in said suit, reference being thereunto made in this answer for that purpose.

This defendant further answering alleges, that after the said suit in chancery had been put at issue, and while it was at issue, the plaintiff in this action, and Arnold W. Taylor aforesaid, conspired and colluded together for the purpose of defrauding this defendant, and other persons who had then purchased for a valuable consideration a portion of the subject-matter of the said suit in chancery.

And that the said plaintiff, and Arnold W. Taylor, so conspiring and colluding together for the said purpose, on or about the twenty-third day of March, 1853, entered into an arrangement to settle the said suit in chancery between themselves, and without permitting the court to pass upon the subject-matter in controversy upon the issue there joined in the said suit.

And that by the said arrangement so made the said Taylor agreed to withdraw his defence to the said suit in chancery, and allow the bill of complaint in said suit to be taken as confessed by and against him, the said Taylor, and to suffer the said Steele to take a decree in said suit to the effect and extent of the whole prayer of the said Steele in his said bill of complaint.

And that by the said arrangement so made the said Taylor agreed to sell and convey to the said Steele the property mentioned and described in the said bond or agreement in writing, and which was the subject-matter of the said suit in chancery, for a consideration, and on terms which were distinct and different from the consideration and terms agreed upon in said bond or agreement in writing.

And that the said two conveyances in the complaint in this action mentioned and set forth, made by George Barstow, as the attorney in fact of Arnold W. Taylor, were made by virtue of and to carry out and consummate the said agreement made on the said twenty-third day of March, 1853, for the said distinct and different consideration, and on the said different terms, for the purpose of defrauding this defendant and others, who were prior purchasers for a valuable consideration, of a portion of the property so conveyed by the said Taylor as aforesaid. Wherefore this defendant says, that the said two conveyances last mentioned and set forth in the complaint in this action are wholly null and void, so far as relates to this defendant. And therefore this defendant demands the judgment of this court, determining the title of the said property first mentioned and described in this answer, and claimed by this defendant, to be in this defendant, and requiring the said plaintiff to release his said adverse claim to an estate or interest in the said property to this defendant, or in the event of his failure or refusal so to do, that such judgment shall stand and be recorded in the place of such release, and perpetually enjoining and restraining the said plaintiff from further asserting or making such adverse claim to the said property, or intermeddling in any manner with the said property, or the title thereto, and requiring the said plaintiff to deliver possession of the said property to this defendant; and giving to this defendant such other or further relief as the nature of the case may require, and to this court may seem just.

NORTH & SECOMBE,
Att'ys for Def'ts.

MINNESOTA TERRITORY,
County of Ramsey, ss:

Samuel Estes, the defendant named in the foregoing answer, being duly sworn, says, that this answer is true of his own knowledge,

except as to matters herein stated, on his information or belief; and as to those matters, that he believes it to be true.

SAMUEL ESTES.

Subscribed and sworn to this 22d day of July, 1854, before me,
SAMUEL M. TRACY,
Notary Public.

Endorsed: "District court, 2nd dist., county of Ramsey.—Franklin Steele ag't Samuel Estes and others.—Answer 711—North & Secombe, att'ys for L. Estes.—Filed July 31, '54.—Geo. W. Prescott, Dept. Cl'k."

MINNESOTA TERRITORY,
District Court, 2nd district, county of Ramsey.

FRANKLIN STEELE
against
BENJAMIN PARKER and others. } *Answer.*

The answer of Benjamin Parker, one of the defendants in the above entitled action, to the complaint of the plaintiff herein, respectfully shows to this court, that the said defendant claims to be the owner of one undivided half part of the following described real property, lying and being in said county, to wit:

The following lots in the town of St. Anthony Falls, as surveyed by William R. Marshall, viz: Lots numbered four (4) and five (5), in block thirty-five (35); lots one (1), two (2) and four (4,) in block twelve (12); lots seven (7), eight (8) and nine (9), in block fifty-three (53); lot eight (8), in block seventy-five (75); lot seven (7), in block seventy-six (76); lots seven (7), eight (8) and eleven (11), in block seven (7); lots one (1) and eight (8), in block eight (8); lots five (5) and eight (8), in block sixty-six (66); lot eleven (11), in block sixty-seven (67); and lot seven (7), in block sixty-eight.

That the said property is a part of the property mentioned and described in the bond or agreement in writing, and in the two last-mentioned conveyances in the complaint in this action set forth; that the title of this defendant to the above described property is as follows, to wit: The said property was granted and conveyed to this defendant and his heirs and assigns, by two deeds of conveyance thereof, duly executed, acknowledged, and delivered by the sheriff of said county—the one deed on the first day of March, 1853, in pursuance of a sale of said property, duly made by the said sheriff on the thirtieth day of December, 1852, upon and by virtue of a certain writ of execution, duly issued out of this court on the fifth day of November, 1852, in an action in this court, in which John W. North was plaintiff, and Arnold W. Taylor, the person mentioned in the complaint in this action, was defendant, in favor of said John W. North and against the said Arnold W. Taylor, for the sum of five hundred and seventy-three

dollars and ten cents; and the other deed on the fourth day of May, 1853, in pursuance of a sale of said property, duly made by the said sheriff on the 3d day of March, 1853, upon and by virtue of a certain writ of execution, duly issued out of this court on the thirteenth day of January, 1853, upon a judgment duly rendered and docketed in this court on the said thirteenth day of January, 1853, in an action in this court, wherein this defendant was plaintiff, and the said Arnold W. Taylor was defendant, in favor of the said Benjamin Parker and against said Arnold W. Taylor, for the sum of two hundred ninety-one dollars and seven cents; which said deeds were duly recorded on the seventh day of March, 1853, and on the 19th day of May, 1853, in the register's office of said county, in book "E" of deeds, pages 356, 357, and 358, and in book "F" of deeds, on pages 38 and 39.

This defendant further says, that he is in possession of lots numbered four (4) and five (5), in block number thirty-five (35), above mentioned, and has been in possession of the same all the time since he purchased the same, as above mentioned, and denies that the plaintiff is in possession of said lots four (4) and five, or either of them, or has been in possession since the time last mentioned.

And this defendant further answering denies, that the two conveyances last mentioned and set forth in the complaint in this action, or either of them, were made in pursuance of, or in conformity with, the bond or agreement in writing, mentioned and set forth in said complaint, as is in said complaint alleged.

And this defendant denies, that in the certain suit in chancery mentioned in said complaint, the court ordered, adjudged, or decreed the said conveyances last mentioned and set forth in said complaint, or either of them, to be made, or that they, or either of them, were made in obedience to such decree, as is in the said complaint alleged.

And this defendant further denies, that in the said suit in chancery the court have ever made any final order, judgment or decree whatever, as will more fully appear by the record and proceedings in said suit, reference being thereunto made in this answer for that purpose.

This defendant further answering alleges, that after the said suit in chancery had been put at issue, and while it was at issue, the plaintiff in this action and Arnold W. Taylor aforesaid conspired and colluded together for the purpose of defrauding this defendant and other persons who had then purchased for a valuable consideration a portion of the subject-matter of the said suit in chancery; and that the said plaintiff and Arnold W. Taylor, so conspiring and colluding together for the said purpose, on or about the twenty-third of March, 1853, entered into an arrangement to settle the said suit in chancery between themselves, and without permitting the court to pass upon the subject-matter in controversy upon the issue then joined in the said suit; and that by the said arrangement so made, the said Taylor agreed to withdraw his defence to the said suit in chancery, and allow the said bill of complaint in said suit to be taken as confessed by and against him, the said Taylor, and to suffer the said Steele to take a decree in said suit to the

effect and extent of the whole prayer of the said Steele in his said bill of complaint; and that by the said arrangement so made, the said Taylor agreed to sell and convey to the said Steele the said property mentioned and described in the said bond or agreement in writing, and which was the subject-matter of the said suit in chancery, for a consideration and on terms which were distinct and different from the consideration and terms contained and agreed upon in said bond or agreement in writing. And that the said two conveyances in the complaint in this action mentioned and set forth, made by George Barstow, as the attorney in fact of Arnold W. Taylor, were made by virtue of, and to carry out and consummate the said arrangement made on the said 23d day of March, 1853, for the said distinct and different consideration, and on the said different terms, for the purpose of defrauding this defendant and others who were prior purchasers for a valuable consideration of a portion of the property so conveyed by the said Taylor aforesaid.

Wherefore this defendant says, that the said two conveyances last mentioned and set forth in the complaint in this action, are wholly null and void, so far as relates to this defendant.

And therefore this defendant demands the judgment of this court, determining the title of the said property first mentioned and described in this answer, and claimed by this defendant, to be in this defendant, and requiring the said plaintiff to release his said adverse claim to an estate or interest in the said property to this defendant, or in the event of his failure or refusal so to do, that such judgment shall stand and be recorded in the place of such release, and perpetually enjoining and restraining the said plaintiff from further asserting or making such adverse claim to the said property or intermeddling in any manner with the said property or the title thereto, and requiring the said plaintiff to deliver possession of the said property to this defendant; and giving to this defendant such other or further relief as the nature of the case may require, and to this court may seem just.

NORTH & SECOMBE,
Attorneys for Defendants.

MINNESOTA TERRITORY,
County of Ramsey, ss:

Benjamin Parker, the defendant named in the foregoing answer, being duly sworn, says, that this answer is true of his own knowledge, except as to matters herein stated on his information or belief, and as to those matters he believes it to be true.

BENJAMIN PARKER.

Subscribed and sworn to this 29th day of July, A. D. 1854, before me,

GEO. W. PRESCOTT,
Notary Public, Min. Ter.

Endorsement: "In the district court, county of Ramsey—Franklin Steele against Benjamin Parker and others.—Answer 711.—Filed July 31st, 1854.

GEO. W. PRESCOTT, *Dep'y Clerk.*
NORTH & SECOMBE,
For defendant Parker."

TERRITORY OF MINNESOTA,
District Court, 2d district, for the county of Ramsey.

FRANKLIN STEELE
against
WILLIAM H. COLE and others.

The answer of William H. Cole, one of the defendants in the above action to the complaint of the plaintiff herein, respectfully shows to this court:

That the said defendant claims to be, and is, the owner of the following described real property, situate, lying, and being in the said county of Ramsey, to wit: One undivided half part of lots one (1), two (2), three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), and ten (10), in block sixty-three (63) in the village of St. Anthony Falls; that the said property, above described, is a part of the property which is described in the bond or agreement in writing, and in the two deeds of conveyance last mentioned and set forth in said complaint; that the title of this defendant to the above described property is as follows, to wit: The said property was granted and conveyed to this defendant, his heirs and assigns, by the sheriff of said county, by two deeds of conveyance of said property, duly executed, acknowledged and delivered by the said sheriff, on the first day of March, 1853, in pursuance of a sale of said property, duly made by said sheriff on the 31st day of December, 1852, upon and by virtue of a certain writ of execution duly issued out of this court on the twelfth day of November, 1852, upon a judgment duly rendered and docketed in this court on 8th day of November, 1852, in an action in this court, wherein Sumner W. Farnham and Charles F. Stimson were plaintiffs, and Arnold W. Taylor, the person mentioned in the complaint in this action, was defendant, in favor of said plaintiffs and against said defendant, for the sum of four hundred and seventy-one dollars and eighty-two cents. And this defendant further answering denies, that the two conveyances last mentioned and set forth in the complaint in this action, or either of them, were made in pursuance of or in conformity with the bond or agreement in writing mentioned, and set forth in said complaint, as is in said complaint alleged; and this defendant denies that, in the certain suit in chancery mentioned in said complaint, the court ordered, adjudged, or decreed the said conveyances last mentioned and set forth in said complaint, or either of them, to be made, or that they or either of them were made in obedience to such decree, as is in the said complaint alleged. And this defendant further denies, that in the said suit in chancery the court has

ever made any final order, judgment or decree whatever, as will more fully appear by the record and proceedings in said suit, reference being thereunto made in this answer for that purpose.

This defendant further answering alleges, that after the said suit in chancery had been put at issue, and while it was at issue, the plaintiff in this action and Arnold W. Taylor aforesaid conspired and colluded together for the purpose of defrauding this defendant and other persons who had then purchased for a valuable consideration a portion of the subject-matter of the said suit in chancery; and that the said plaintiff and Arnold W. Taylor, so conspiring and colluding together for the said purpose, on or about the 23 day of March, 1853, entered into an arrangement to settle the said suit in chancery between themselves, and without permitting the court to pass upon the subject-matter in controversy upon the issue then joined in the said suit.

And that by the said arrangement so made, the said Taylor agreed to withdraw his defence to the said suit in chancery, and allow the bill of complaint in said suit to be taken as confessed by and against him, the said Taylor, and to suffer the said Steele to take a decree in said suit to the effect and extent of the whole prayer of the said Steele in his said bill of complaint.

And that by the said arrangement so made, the said Taylor agreed to sell and convey to the said Steele the property mentioned and described in the said bond or agreement in writing, and which was the subject-matter of the said suit in chancery, for a consideration and on terms which were distinct and different from the consideration and terms contained and agreed upon in the said bond or agreement in writing; and that the said two conveyances in the complaint in this action mentioned and set forth, made by George Barstow as the attorney in fact of Arnold W. Taylor, were made by virtue of and to carry and consummate the said agreement made on the said twenty-third day of March, 1853, for the said distinct and different consideration, and on the said different terms, for the purpose of defrauding this defendant and others who were prior purchasers for a valuable consideration of a portion of the property so conveyed by the said Taylor as aforesaid.

Wherefore this defendant says that the said two conveyances last mentioned and set forth in the complaint in this action were wholly null and void, so far as relates to this defendant.

And therefore this defendant demands judgment of this court, determining the title of the said property first mentioned and described in this answer to be in this defendant, and requiring the said plaintiff to release his said adverse claim to an estate or interest in the said property, to this defendant, or in the event of his failure or refusal so to do, that such judgment shall stand and be recorded in the place of such release, and perpetually enjoining and restraining the said plaintiff from further asserting or making such adverse claim to the said property, or the title thereto, or intermeddling in any way therewith, and requiring the said plaintiff to deliver possession of the said property to this de-

fendant, and giving to this defendant such other or further relief as the nature of the case may require, and to this court may seem just.

NORTH & SECOMBE,
Atty's for Def't.

MINNESOTA TERRITORY,
County of Ramsey, ss:

Wm. H. Cole, the defendant above named in the foregoing answer, being duly sworn, says, that this answer is true of his own knowledge, except as to matters herein stated on his information or belief, and as to those matters that he believes it to be true.

WILLIAM H. COLE.

Subscribed and sworn to before me this 24th day of July, A. D. 1854.

GEORGE W. PRESCOTT,
Notary Public.

Endorsement: District court, 2d district, county of Ramsey—Franklin Steele against William H. Cole and others—Answer 711—Filed July 31, 1854—Geo. W. Prescott, dept. clerk—North & Secombe, def'ts attorneys.

TERRITORY OF MINNESOTA,
District court, 2d dis't, for the county of Ramsey.

FRANKLIN STEELE
against
ORVILLE W. STOUGHTON and others.

The answer of Orville W. Stoughton, one of the defendants in the above action to the complaint of the plaintiff herein, respectfully shows to this court, that the said defendant claims to be, and is, the owner of an undivided half part of the following described real property, situate, lying and being in the village of St. Anthony Falls, and county of Ramsey aforesaid, to wit: lots numbered six (6), seven (7), eight (8), nine (9), and ten (10), in block number twenty-eight (28), and lot number two (2) in block number twenty-five (25).

That said property above described is a part of the property which is described in the bond or agreement in writing, and in the two deeds of conveyance last mentioned and set forth in the complaint of the plaintiff in this action, as will appear, reference being had to the plot of said town of St. Anthony Falls, annexed to one of the said deeds. That the said property was granted and conveyed to this defendant, and his heirs and assigns, by the sheriff of the said county of Ramsey, on the twenty-fifth day of May, 1853, by a deed of conveyance duly executed, acknowledged and delivered by the said sheriff, in pursuance of a sale of the said property duly made by the said sheriff, on the twenty-fourth day of March, 1853, upon and by virtue of a certain writ

of execution duly issued out of this court on the third day of February, 1853, upon a judgment duly rendered and docketed in this court on said last mentioned day, in an action in this court, wherein Isaac Gilpatrick was plaintiff, and Arnold W. Taylor, the person mentioned in the complaint in this action, was defendant, in favor of the said plaintiff Gilpatrick and against said defendant Taylor, for the sum of one thousand one hundred and twenty-two dollars and seventy-one cents; which deed was duly recorded in the registry of deeds for said county of Ramsey on the 1st day of June, 1853, in book 'F' of deeds, on pages 253, 254, and 255.

And this defendant further answering denies, that the two conveyances last mentioned and set forth in the complaint in this action, or either of them, were made in pursuance of or in conformity with the bond or agreement in writing mentioned and set forth in said complaint, as is in said complaint alleged.

And this defendant denies, that in the certain suit in chancery mentioned in said complaint the court ordered, adjudged or decreed, the said conveyances last mentioned and set forth in said complaint, or either of them, to be made, or that they or either of them were made in obedience to such decree, as is in said complaint alleged.

And this defendant further denies, that in the said suit in chancery the court has ever made any final order, judgment or decree whatever, as will more fully appear by the record and proceedings in said suit, reference being thereunto made in this answer for that purpose. This defendant further answering alleges, that after the said suit in chancery had been at issue, and while it was at issue, the plaintiff in this action and Arnold W. Taylor aforesaid conspired and colluded together for the purpose of defrauding this defendant, and other persons who had then purchased for a valuable consideration, a portion of the subject-matter of the said suit in chancery.

And that the said plaintiff and Arnold W. Taylor, so conspiring and colluding together for the said purpose, on or about the 23d day of March, 1853, entered into an arrangement to settle the said suit in chancery between themselves, and without permitting the court to pass upon the subject-matter in controversy upon the issue then joined in the said suit.

And that by the said arrangement so made, the said Taylor agreed to withdraw his defence to the *the* said suit in chancery, and allow the bill of complaint in said suit to be taken as confessed by and against him the said Taylor, and to suffer the said Steele to take a decree in the said suit to the effect and extent of the whole prayer of the said Steele in his said bill of complaint.

And by the said arrangement so made the said Taylor agreed to sell and convey to the said Steele the property mentioned and described in the said bond or agreement in writing, and which was the subject-matter of the said suit in chancery, for a consideration and on terms

which were distinct and different from the consideration and terms contained and agreed upon in said bond or agreement in writing.

And that the said two conveyances in the complaint in this action mentioned and set forth, made by George Barstow as the attorney in fact of Arnold W. Taylor, were made by virtue of and to carry out and consummate the said agreement made on the said twenty-third day of March, 1853, for the said distinct and different consideration, and on the said different terms, for the purpose of defrauding this defendant, and others who were prior purchasers for a valuable consideration, of a portion of the property so conveyed by the said Taylor as aforesaid.

Wherefore this defendant says that the said two conveyances last mentioned and set forth in the complaint in this action are wholly null and void, so far as relates to this defendant.

And therefore this defendant demands the judgment of this court, determining the title to the said property first mentioned and described in this answer and claimed by this defendant, to be in this defendant, and requiring the said plaintiff to release his said adverse claim to an estate or interest in the said property to this defendant, or in the event of his failure or refusal so to do, that such judgment shall stand and be recorded in the place of such release, and perpetually enjoining and restraining the said plaintiff from further asserting, or making such adverse claim to the said property, or intermeddling in any manner with the said property or the title thereto, and requiring the said plaintiff to deliver possession of the said property to this defendant; and giving to this defendant such other or further relief as the nature of the case may require, and to this court may seem just.

NORTH & SECOMBE,
Att'ys for Defts.

MINNESOTA TERRITORY,
County of Ramsey, ss:

Orville W. Stoughton, the defendant named in the foregoing answer, being duly sworn, says, that this answer is true of his own knowledge, except as to matters herein stated on his information and belief, and as to those matters he believes it to be true.

O. W. STOUGHTON.

Subscribed and sworn to this 24th day of July, A. D. 1854, before me,

GEO. W. PRESCOTT,
Notary Public, Min. Ter.

Endorsement:

"District court, 2d dist., county of Ramsey—Franklin Steele against Orville W. Stoughton and others,—Answer 711—North & Secombe, att'ys for def't—Filed July 21st, 1854—Geo. W. Prescott, dep't clerk."

TERRITORY OF MINNESOTA,
District court, 2d district, for the county of Ramsey.

FRANKLIN STEELE
against
JAMES MCCANN and others.

The answer of James McCann, one of the above-named defendants to the complaint of the plaintiffs in this action, respectfully shows to this court, that the said defendant claims to be and is the owner of the following described real property, situated, lying and being in said county of Ramsey, and described as follows, to wit: One undivided half of lots numbered five (5), six (6), seven (7), eight (8), and nine (9), in block one (1); lot two (2), in block two (2); lots one (1), and nine (9), in block (3); lot nine (9), in block four (4), and lots nine (9), and ten (10), in block, seven (7), all in the village of St. Anthony Falls.

That the said property above described is a part of the property which is described in the bond or agreement in writing, and in the two deeds of conveyance last mentioned and set forth in the complaint of the plaintiff in this action, as will appear, reference being had to the plot of said town of St. Anthony Falls, annexed to one of said deeds.

That the said property was granted and conveyed to this defendant, and his heirs and assigns, by the sheriff of said county on the first day of March, 1853, by two deeds of conveyance on that day duly executed, acknowledged and delivered, in pursuance of a sale of said property duly made by the said sheriff on the 30th day of December, 1852, upon and by virtue of a certain writ of execution duly issued out of this court on the 2d of November, 1852, and directed said sheriff, upon a judgment duly rendered and docketed in this court on the 2d day of November, 1852, in an action in this court wherein John W. North was plaintiff, and Arnold W. Taylor, the person mentioned in the complaint of the plaintiffs in this action, was defendant, in favor of said North and against said Taylor, for the sum of five hundred and seventy-three dollars and ten cents, which deeds were duly recorded in the registry of deeds for said Ramsey county on the 22d day of March, 1853, in book "F" of deeds, on pages 167, 168, 169, and 170.

And this defendant further answering denies, that the two conveyances last mentioned and set forth in the complaint in this action, or either of them, were made in pursuance of or in conformity with the bond or agreement in writing mentioned and set forth in said complaint, as is in said complaint alleged. And this defendant denies that in the certain suit in chancery mentioned in said complaint, the court ordered, adjudged, or decreed the said conveyances last mentioned and set forth in said complaint or either of them to be made, or that they or either of them were made in obedience to such decree, as is in said complaint alleged.

And this defendant further denies, that in the said suit in chancery the court has ever made any final order, judgment, or decree whatever, as will more fully appear by the record and proceeding in said suit, reference being thereunto made in this answer for that purpose.

This defendant further answering alleges, that after the said suit in chancery had been put at issue, and while it was at issue, the plaintiffs in this action, and Arnold W. Taylor aforesaid, conspired and colluded together for the purpose of defrauding this defendant, and other persons who had then purchased for a valuable consideration a portion of the subject-matter of the said suit in chancery; and that the said plaintiff and Arnold W. Taylor, so conspiring and colluding together for the said purpose, on or about the twenty-third day of March, 1853, entered into an arrangement to settle the said suit in chancery between themselves, and without permitting the court to pass upon the subject-matter in controversy upon the issue then joined in the said suit.

And that by the said arrangement so made the said Taylor agreed to withdraw his defence to the said suit in chancery, and allow the bill of complaint in said suit to be taken as confessed by and against him, the said Taylor, and to suffer the said Steele to take a decree in said suit to the effect and extent of the whole prayer of the said Steele in his said bill of complaint.

And that by the said arrangement so made the said Taylor agreed to sell and convey to the said Steele the property mentioned and described in the said bond or agreement in writing, and which was the subject-matter of the said suit in chancery, for a consideration and on terms which were distinct and different from the consideration and terms contained and agreed upon in said bond or agreement in writing; and that the said two conveyances in the complaint in this action mentioned and set forth, made by George Barstow as the attorney in fact of Arnold W. Taylor, were made by virtue of, and to carry out and consummate the said agreement made on the twenty-third day of March, 1853, for the said distinct and different consideration, and on the said different terms, for the purpose of defrauding this defendant, and others who were prior purchasers for a valuable consideration, of a portion of the property so conveyed by the said Taylor as aforesaid.

Wherefore this defendant says, that the said two conveyances last mentioned and set forth in the complaint in this action are wholly null and void, so far as relates to this defendant, and therefore this defendant demands the judgment of this court determining the title of said property first mentioned and described in this answer and claimed by this defendant, to be in this defendant, and requiring the said plaintiff to release his said adverse claim to an estate or interest in the said property to this defendant, or, in the event of his failure or refusing so to do, that such judgment shall stand and be recorded in the place of such release; and perpetually enjoining and restraining the said plaintiff from further asserting or making such adverse claim to the said property, or intermeddling in any manner with the said property, or the title thereto, and requiring said plaintiffs to deliver possession of said property to

to this defendant, and giving to this defendant such other or further relief as the nature of the case may require, and to this court may seem just.

NORTH & SECOMBE,
Attorneys for Def'ts.

MINNESOTA TERRITORY,
County of Ramsey, ss:

James McCann, the defendant named in the foregoing answer, being duly sworn, says, that this answer is true of his own knowledge, except as to matters herein stated on his information or belief, and as to those matters that he believes it to be true.

JAMES McCANN.

Subscribed and sworn to, this 24th day of July, 1854, before me,
GEO. W. PRESCOTT,
Notary Public.

Endorsed: District Court, 2d district, county of Ramsey—Franklin Steele vs. James McCann and others—Answer No. 711—North & Secombe, attorneys for defendants—Filed July 31, 1854—Geo. W. Prescott, dept. clerk.

MINNESOTA TERRITORY,
District court, 2d dist., for the county of Ramsey.

FRANKLIN STEELE
vs.
Z. E. B. NASH and others.

The answer of Zebrion E. B. Nash, defendant in the above entitled action, to the complaint of the plaintiff herein, respectfully shows to this court, that the said defendant claims to be and is the owner of one undivided half part of the following described real property, situate, lying, and being in the said county of Ramsey, to wit, lots numbered two (2) and six (6), in block numbered forty-six (46), in the village of St. Anthony Falls.

That the said property above described is a part of the property which is described in the bond or agreement in writing, and in the two deeds of conveyance last mentioned and set forth in the complaint of the plaintiff in this action, as will appear, reference being had to the plat of said town of St. Anthony Falls, annexed to one of the said deeds.

That the said property was granted and conveyed to this defendant, and his heirs and assigns, by the sheriff of said county, on the first day of March, 1853, by a deed of conveyance on that day duly executed, acknowledged, and delivered by the said sheriff, in pursuance of a sale of said property, duly made by the said sheriff on the thirtieth day

of December, 1852, upon and by virtue of a certain writ of execution duly issued out of this court on the second day of November, 1852, upon a judgment duly rendered and docketed in this court on the second day of November, 1852, in an action in this court, wherein John W. North was plaintiff, and Arnold W. Taylor, the person mentioned in the complaint in this action, was defendant, in favor of said plaintiff, John W. North, and against the said defendant, Arnold W. Taylor, for the sum of five hundred and seventy-three dollars and ten cents, which deed was duly recorded in the registry of deeds for Ramsey county aforesaid, on the first day of March, 1853, in book "E" of deeds, on pages 280 and 281.

And this defendant Nash, with Octavia M. Nash his wife, afterwards, to wit, on the twenty-third day of February, 1854, by their deed duly executed, acknowledged and delivered, remised, released and forever quit-claimed unto John W. North, all their right, title and interest in and to one undivided fourth part of said lots six, heretofore in this answer particularly described; and the said John W. North, and Ann L. North, his wife, afterwards, to wit, on the eleventh day of July, 1854, by their deed duly executed and acknowledged, remised, released and forever quit-claimed to this defendant, all their right, title and interest in the said undivided fourth part of said lots 6, last above described; and that said defendant is in the actual possession of the above described property; and this defendant further answering denies, that the said Steele is in possession of said property, and denies that the two conveyances last mentioned and set forth in the complaint in this action, or either of them, were made in pursuance of or conformity with the bond or agreement in writing mentioned and set forth in said complaint, as is in said complaint alleged.

And this defendant denies, that in the certain suit in chancery mentioned in said complaint, the court ordered, adjudged or decreed the said conveyances last mentioned and set forth in said complaint, or either of them, to be made, or that they or either of them were made in obedience to such claim, as is in the said complaint alleged.

And this defendant further denies, that the said suit in chancery, the court has ever made any final order, judgment or decree whatever, as will more fully appear by the records and proceedings in said suit, reference being thereunto made in this answer for that purpose. This defendant further answering alleges, that after the said suit in chancery had been put at issue, and while it was at issue, the plaintiff in this action, and Arnold W. Taylor aforesaid, conspired and colluded together for the purpose, on or about the 23d day of March, 1853, entered into an arrangement to settle the said suit in chancery between themselves, and without permitting the court to pass upon the subject-matter in controversy, upon the issue then joined in the said suit.

And that by the said arrangement so made, the said Taylor agreed to withdraw his defence to the said suit in chancery, and allow the bill

1041

of complaint in said suit to be taken as confessed by and against him, the said Taylor, and to suffer the said Steele to take a decree in said suit to the effect and extent of the whole prayer of the said Steele in his said bill of complaint; and that by the said arrangement so made, the said Taylor agreed to sell and convey to the said Steele the property mentioned and described in the said bond or agreement in writing, and which was the subject-matter of the said suit in chancery, for a consideration and on terms which were distinct and different from the considerations and terms contained and agreed upon in said bond or agreement in writing.

And that the said two conveyances in the complaint in this action mentioned and set forth, made by George Barstow as the attorney in fact of Arnold W. Taylor, were made by virtue of, and to carry out and consummate the said agreement made on the said twenty-third day of March, 1853, for the said distinct and different consideration, and on the said different terms, for the purpose of defrauding this defendant and others who were prior purchasers for a valuable consideration of a portion of the property so conveyed by the said Taylor, as aforesaid.

Wherefore, this defendant says that the two said conveyances last mentioned and set forth in the complaint in this action, are wholly null and void, so far as relates to this defendant.

And therefore this defendant demands the judgment of this court, determining the title of the said property first mentioned and described in this answer, and claimed by this defendant, to be in this defendant, and requiring the said plaintiff to release his said adverse claim to an estate or interest in the said property, to this defendant, or in the event of his failure or refusal so to do, that such judgment shall stand and be recorded in the place of such release, and perpetually enjoining and restraining the said plaintiff from further asserting or making such adverse claim to the said property, or intermeddling in any manner with the said property, or the title thereto, and requiring the said plaintiff to deliver possession of the said property to this defendant; and giving to this defendant such other or further relief as the nature of the case may require, and to this court may seem just.

Dated July, 1854.

NORTH & SECOMBE,
Attorneys for Defts.

MINNESOTA TERRITORY,
Ramsey County, ss:

John W. North, one of the attorneys for Z. E. B. Nash, the defendant named in the foregoing answer, being duly sworn, says, that he has been attorney and counsel in the legal proceedings referred to in the foregoing answer, and is familiar with the proceedings therein, and that his answer is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters that

he believes them to be true; and that the reason why this affidavit is not made by the above named defendant is, that he is not in the country.

JOHN W. NORTH.

Subscribed and sworn before me, this 24th day of July, A. D. 1854.

GEO. W. PRESCOTT,
Notary Public, M. T.

Endorsed: District court, 2d dist., county of Ramsey—Franklin Steele against Z. E. B. Nash and others—Answer 711—North & Secombe, att'ys for def't.—Filed July 31, 1854—Geo. W. Prescott, Dep't Clerk.

MINNESOTA TERRITORY,
District Court, 2d district, for the county of Ramsey.

FRANKLIN STEELE
against
GEO. B. DUTTON, MOSES W. GETCHELL, and others.

The answer of Geo. B. Dutton and Moses W. Getchell, above named defendants to the complaint of the plaintiff in this action, respectfully shows to this court:

That the defendants claim to be and are the owners of the following real property, situate, lying, and being in the county of Ramsey aforesaid, to wit: One undivided half part of lots numbered three (3), four (4), seven (7) and eight (8), in block number thirty-three, in the village of St. Anthony Falls; and the said defendant, Dutton, is the owner of one undivided half part of lots numbered six (6), seven (7) and eight (8), in block numbered twenty-seven in said village.

That said property, above described, is a part of the property which is described in the bond or agreement in writing, and in the two deeds of conveyance last mentioned and set forth in the complaint of the plaintiff in this action, as will appear, reference being had to the plat of said town of St. Anthony Falls, annexed to one of said deeds.

That the said property was conveyed and granted to these defendants, Dutton and Getchell, and to this defendant, Dutton, by the sheriff of said county of Ramsey, on the twenty-sixth day of May, 1853, by two deeds of conveyance, duly executed, acknowledged, and delivered by the said sheriff to these defendants, in pursuance of a sale of the said property, duly made by him on the 24th day of March, 1853, upon and by virtue of a certain writ of execution, duly issued out of this court on the third day of February, 1853, upon a judgment in

1042

this court duly rendered and docketed on said last-mentioned day, in an action in this court wherein Isaac Gilpatrick was plaintiff, and Arnold W. Taylor, the person mentioned in the complaint in this action, was defendant, in favor of said Gilpatrick and against said Taylor, for the sum of one thousand one hundred and twenty-two dollars and seventy-one cents, which deeds were duly recorded in the registry of deeds for Ramsey county aforesaid, on the 28th day of July, 1853, in book "F" of deeds, on pages 372, 373 and 374.

And these defendants further answering deny, that the two conveyances last-mentioned and set forth in the complaint in this action, or either of them, were made in pursuance of or in conformity with the bond or agreement in writing, mentioned and set forth in said complaint, as is in said complaint alleged.

And these defendants deny, that in the certain suit in chancery mentioned in said complaint, the court ordered, adjudged or decreed the said conveyances last mentioned and set forth in said complaint, or either of them, to be made, or that they, or either of them, were made in obedience to such decree, as is in the said complaint alleged.

And the defendants further deny, that in the said suit in chancery the court has ever made any final order, judgment or decree whatever, as will more fully appear by the record and proceedings in said suit, reference being thereunto made in this answer for that purpose.

These defendants further answering allege, that after the said suit in chancery had been put at issue, and while it was at issue, the plaintiff in this action, and Arnold W. Taylor, aforesaid, conspired and colluded together for the purpose of defrauding these defendants and other persons who had then purchased, for a valuable consideration, a portion of the subject-matter of the said suit in chancery.

And that the said plaintiff and Arnold W. Taylor, so conspiring and colluding together for the said purpose, on or about the twenty-third day of March, 1853, entered into an arrangement to settle the said suit in chancery between themselves, and without permitting the court to pass upon the subject-matter in controversy, upon the issue then joined in the said court.

And that by the said arrangement so made, the said Taylor agreed to withdraw his defence to the said suit in chancery, and allow the bill of complaint in said suit to be taken as confessed by and against him, the said Taylor, and to suffer the said Steele to take a decree in said suit, to the effect and extent of the whole prayer of the said Steele in his said bill of complaint.

And that by the said arrangement so made, the said Taylor agreed to sell and convey to the said Steele the property mentioned and described in the said bond or agreement in writing, and which was the subject-matter of the said suit in chancery, for a consideration and on terms which was distinct and different from the consideration and terms contained and agreed upon in said bond or agreement in writing; and that the said two conveyances in the complaint in this action mentioned and set forth, made by George Barstow, as the attorney in fact of said

Taylor, were made by virtue of and to carry out and consummate the said agreement made on the said twenty-third day of March, 1853, for the said distinct and different consideration, and on the said different terms, for the purpose of defrauding these defendants and others who were prior purchasers, for a valuable consideration, of a portion of the property so conveyed by the said Taylor as aforesaid.

Wherefore these defendants say, that the said two conveyances last mentioned and set forth in the complaint in this action are wholly null and void, so far as relates to these defendants; and, therefore, these defendants demand judgment of this court, determining the title of the said property first mentioned and described in this answer, and claimed by these defendants to be in them, and requiring the said plaintiff to release his said adverse claim to an estate or interest in the said property to these defendants; or, in the event of his failure or refusal so to do, that such judgment shall stand and be recorded in place of such release; and perpetually enjoining and restraining the said plaintiff from further asserting or making such adverse claim to the said property, or intermeddling in any manner with the said property or the title thereto; and requiring the said plaintiff to deliver possession of the said property to these defendants; and giving to these defendants such other or further relief as the nature of the case may require, and to this court may seem just.

Dated July 24th, 1854.

NORTH & SECOMB,
Attorneys for Deft's.

MINNESOTA TERRITORY,
Ramsey county, ss:

George B. Dutton, one of the above-named defendants, being duly sworn, says, the above answer is true of his own knowledge, except as to matters therein stated to be on information and belief, and as to those matters he believes it to be true.

G. B. DUTTON.

Subscribed and sworn to before me, this 24th day of July, A. D. 1854.

GEO. W. PRESCOTT,
Notary Public.

Endorsed: "District court, 2d district, county of Ramsey—Franklin Steele against Geo. B. Dutton, Moses W. Gatchell, and others—Answer 711—North & Secombe, Att'ys for defts.—Filed July 31, 1854—Geo. W. Prescott, dept. clerk."

TERRITORY OF MINNESOTA,
District Court, 2d district, county of Ramsey, ss:

I, Geo. W. Prescott, clerk of the above entitled court, hereby certify that the foregoing are true copies of the original answers of the several

persons therein named in the cause in said answer entitled of Franklin Steele against James H. Trader and others, which originals are on file in said cause in said clerk's office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at St. Paul, in said county, this 7th day of January, A. D. 1856.

[L. S.]

GEO. W. PRESCOTT, *Clerk.*

TERRITORY OF MINNESOTA,
District Court, 2d district, county of Ramsey.

FRANKLIN STEELE
against
DAVID A. SECOMBE and others.

Demurrer to the answer of David A. Secombe.

The plaintiff in the above entitled action demurs to all the new matter contained in the answer of David A. Secombe, one of the defendants, for the insufficiency thereof, and specifies for ground of objection thereto, that the same does not state any fact or facts constituting a defence to the cause of action set forth in the plaintiff's complaint.

RICE, HOLLINSHEAD, & BECKER,
August 3rd, 1854. *Attorneys for Plaintiffs.*

The foregoing endorsed: "Territory of Minnesota, district court, 2d district, county of Ramsey.—Franklin Steele against David A. Secombe and others.—Filed May 29th, 1855."

GEO. W. PRESCOTT, *Clerk.*

"Demurrer to answer of D. A. Secombe.

"Due service of a copy of the within demurrer on us this third day of August, 1854, is hereby admitted.—North & Secombe, atty's for D. A. Secombe.—Rice, Hollinshead, & Becker, atty's for plaintiffs."

TERRITORY OF MINNESOTA,
District Court, 2d district, county of Ramsey.

FRANKLIA STEELE
against
DAVID A. SECOMBE and others.

Stipulation.

It is hereby stipulated and agreed, by and between Rice, Hollinshead, & Becker, attorneys for plaintiff, and North & Secombe, attorneys for David A. Secombe, John Rollins, William D. Garland, J.

La Croix, Benjamin Parker, James McCann, Orville W. Stoughton, Joseph C. Lawrance, Samuel Estes, William H. Townsend, William H. Cole, Eli C. Jones, E. F. King, George B. Dutton, Moses W. Getchell, Z. E. B. Nash, Sumner W. Farnham, and Charles F. Stimson, defendants in the said action, that the demurrer of the plaintiff to the answer of the said David A. Secombe shall be regarded as applicable also to the answer of the other defendants above named, and that the determination and judgment of the said court upon said demurrer may be entered in the cases of the other of the above named defendants, in like manner and with the same effect as if a similar demurrer had been made to each of the answers of the said defendants respectively. Dated August 4th, 1854.

RICE, HOLLINSHEAD, & BECKER,
Attorneys for Plaintiff.

NORTH & SECOMBE,
Attorneys for above named defendants.

St. Paul, August 3d, 1854.

The foregoing endorsed: "Territory of Minnesota, district court, 2d district, county of Ramsey—Franklin Steele against D. A. Secombe and others—Stipulation.—Filed May 28th, 1855."

GEORGE W. PRESCOTT,
Clerk.

TERRITORY OF MINNESOTA,
D. C., 2d judicial district, Ramsey county.

FRANKLIN STEELE
against
JAMES H. TRADER and others.

This is a complaint brought by the plaintiff against the defendants, by virtue of a statute provision of this Territory to determine or quiet the title to certain real estate described in the complaint, and lying in the town of St. Anthony Falls.

The following abstract of the pleadings is copied from the brief of counsel, and presents the material facts necessary to a proper understanding of the question before the court, which arises on demurrer to the new matter set up in the answer.

The complaint sets forth a claim of title to Arnold W. Taylor, of an undivided half part of the St. Anthony Falls property, as therein described, which is not disputed, as both the plaintiff and the defendant claim under him, being the same property or interest which the plaintiff had previously conveyed to him.

The complaint further states, that on the 17th January, 1852, the plaintiff purchased the interest of Taylor, of which he had been the former owner, for $25,000, the purchase-money whereof was to be paid in a certain manner agreed upon by the parties; at the same time a bond was given setting forth the terms of sale, and conditioned to execute

deeds for the property, by Taylor to Steele; this bond is dated 17 January, 1852, and was recorded in the proper office in Ramsey county, M. T., January 19, 1852, in book A of bonds, pp. 160, 161, &c. That on the 4th May, 1853, Taylor executed the deeds stipulated in said bond, which were duly recorded. There were two—one a warranty deed for the St. Anthony Falls property, exclusive of "Hennepin" and "Boom" islands, and which is the property in question. The other a quit-claim deed for the said islands, which are not embraced in the claim set up by defendants.

These deeds recite the bond, and also a decree in chancery in the district court for the first judicial district—Franklin Steele against Arnold W. Taylor—on the 4th May, 1853, in which the said conveyances were decreed. The complaint then goes on to state, that the defendants set up claims to the property, and prays the usual relief; a part of the defendants have not answered, but those who have answered set up a claim to an undivided half part of a property which is admitted to be a part of the property described in the said bond and deeds of 4th May, 1853, and rely upon the same statement of facts to substantiate their claims. The property claimed is described in each answer; the defendants severally set up sheriff's titles founded on judgments obtained against Arnold W. Taylor, subsequent to the execution of the said bond, ranging from the 2d of November, 1852, (which is the earliest judgment,) to the 3d February, 1853, upon which execution was issued, sales of Taylor's interest in the property in question made, and sheriff's deeds executed either to the defendants or to the grantors under whom they claim.

The defendants "deny, that the 2 conveyances last mentioned and set forth in the complaint in this action, or either of them, were made in pursuance of, or in conformity with, bond or agreement in writing, mentioned and set forth in said complaint, as in said complaint alleged. They also deny that the court, in the suit in chancery referred to, decreed the said conveyances, or that the said conveyances "were made in obedience to such decree as in said complaint alleged;" they deny that the court made any final decree, and refer to the record.

The defendants also state, "that after the said suit in chancery had been put at issue, the plaintiff in this action, and Arnold W. Taylor aforesaid, conspired and colluded together for the purpose of defrauding this defendant and other persons who had then purchased, for a valuable consideration, a portion of the subject-matter of the said suit in chancery; and that the said plaintiff and Arnold W. Taylor, so conspiring and colluding together for the said purpose on or about the twenty-third day of March, 1853, entered into an arrangement to settle the said suit in chancery between themselves, and without permitting the court to pass upon the subject-matter in controversy upon the issue then joined in the said suit, and that by the said arrangement so made, the said Taylor agreed to withdraw his defence to the said suit in chancery, and allow the bill of complaint in said suit to be taken as confessed by and against him, the said Taylor, and to suffer the said Steele to take

a decree in said suit to the effect and extent of the whole prayer of the said Steele in his said bill of complaint; and that by the said arrangement so made, the said Taylor agreed to sell and convey to the said Steele the property mentioned and described in the said bond or agreement in writing, and which was the subject-matter of the said suit in chancery, for a consideration, and on terms which were distinctly different from the consideration and terms contained and agreed upon in said bond or agreement in writing, and that the said two conveyances in the complaint in this action mentioned and set forth, made by George Barstow as the attorney in fact of Arnold W. Taylor, were made by virtue of and to carry out and consummate the said agreement made on the said twenty-third day of March, 1853, for the said distinct and different consideration, and on the said different terms, for the purpose of defrauding this defendant and others, who were prior purchasers, for a valuable consideration, of a portion of the property so conveyed by the said Taylor as aforesaid "

"Wherefore," (the defendants say,) "the two conveyances last mentioned and set forth in the complaint in this action are wholly null and void so far as relates to these defendants."

The plaintiffs have filed a general demurrer to the answer of David A. Secombe, on the ground the same does not state any facts constituting a defence to the cause of action of plaintiff, with a stipulation by counsel for the defendants, who have put in a defence, that the demurrer shall be applicable to the answers of the other defendants, and that the determination and judgment of the court upon said demurrer may be entered in the cases of the other defendants.

A good title to the estate in question is shown by the facts alleged in the complaint. The bond or agreement in writing given by Taylor to Steele on the 17th day of January, 1852, by which it was agreed and conditioned that the premises should be conveyed to said Steele upon the performance of the conditions on his part mentioned in the bond, gave to Steele a lien upon the land therein agreed to be conveyed; and the record of the bond, which was duly made, was notice to subsequent purchasers. See Revised Statute, chap. 47, sec. 1 and 3.

The answer, by not denying it, admits that the bond was given as alleged in the complaint; and for aught which appears in the pleadings, it was in full force up to the time when Taylor, by his attorney in fact, made the conveyance to Steele. Thus far, then, it appears that Steele acquired a legal or equitable right to the conveyance long before the time which the defendants set up as the commencement of their claim; that his right to the conveyance continued in force till the deeds were made to him; and that in executing the deeds, Taylor only complied with the conditions of his bond.

Do the facts set up in the answer constitute a defence to the matters appearing in the complaint, and which are admitted, or not denied?

"A general demurrer confesses all matters of fact well pleaded; but if a count or plea be vicious, a demurrer thereto is no confession of the matter alleged." Story's Pleading, 2d ed. 240, and cases there cited.

Applying this rule of law to the new matters set up by the defendants, in order to show a title in themselves, and in order to avoid the plaintiff's title, it will be seen, as it appears to me very clearly, that if they have a defence, they have failed to make it appear by their answer. They allege, in the substance, that Steele and Taylor conspired and colluded together to defraud the defendants, and that, in fraud of defendants' rights, they settled the chancery suit; that Taylor withdrew his defence, and, in completion of the fraud, executed the conveyances of the premises in question to Steele.

But a naked charge of fraud, unaccompanied by the facts which constitute it, is bad pleading, either in law or equity. (Story's Equity Pleading, secs. 28, 251–2; 1 Chitty's Pleading, 338; McMurray vs. Gifford, 5 Howe, Bra. Rep. 14, Baddington vs. Davis, 6 How. pr. Rep. 401; Chitty's Pleading, par. 251–3–4.)

It is true that at the common law a different rule obtained as to pleas or answers, and in many instances fraud could be given in evidence under the general issue, but under the code we have no general issue; and facts set up in the order by way of avoiding the complaint must, as a general rule, be stated with the same certainty as required in the complaint, and be governed by rules, with few exceptions, like those which at common law governed a plea in bar. (See cases above cited from How. pr. Reps., and also 1 Monell's Practice, 2d ed., 575.)

The allegation of fraud in the answer is but the statement of a conclusion of law, and is peculiarly unfortunate in this case, as the acts which are alleged to be fraudulent are shown by the complaint and answer to have been done in good faith.

The first act charged as fraudulent is the settlement of the chancery suit; but no reason is given why the parties might not thus have compromised their affairs, nor why it was not a praiseworthy and honorable act on the part of Taylor; for aught which appears, he was bound, not only in law and equity but in common honesty, to make the arrangement complained of. It is alleged that part of the fraudulent arrangement was the withdrawal of Taylor's defence, but there is no allegation that he had any defence, of any description whatever; and so far as the pleadings show the facts, they prove conclusively that he had none. If Taylor had a good defence, the defendants should have so alleged in their answer, and should also have shown by their answer in what that defence consisted.

The answer also denies that the deeds from Taylor to Steele were given in pursuance of and in conformity with the conditions of the bond from Taylor to Steele, and alleges that they were given in pursuance of an agreement made between the parties on or about the 23d day of March, 1853, and on terms and for a consideration distinct and different from those mentioned in said bond. What the new agreement and different consideration were, is not stated; but the deeds, which are made part of the complaint, acknowledge the payment of $25,000 by Steele to Taylor, being the exact sum which was stipulated to be paid by the bond. The payment of this sum by Steele to

Taylor is not denied by the answer, and is therefore admitted. (Monell's Practice, 2d ed., 364.)

If there had been, notwithstanding these admitted facts, such a new agreement, and such a change of consideration, as would by force of law carry with them an abandonment or rescinding of the old agreement or bond, they should at least have been put upon the record, that the opposite party might have known what he had to meet, and that the court might have judged of its force and effect.

The statement of their title by sheriff's deeds cannot avoid them, unless they have made other allegations, which, in form and substance, may go in avoidance of the plaintiff's prior lien, in virtue of his bond. This, in my opinion, they have failed to do. The answer for such purpose amounts to this, and no more: It admits the facts necessary to make good the plaintiff's title to the property in question; it sets up certain acts of Taylor and Steele, which appear from the pleadings not only to have been entirely consistent with fair dealing and honesty, but to have grown necessarily out of their bona fide and mutual obligations, and then makes the naked charge that these acts are fraudulent as to the defendant.

The denial that the deeds were made in pursuance of the bond is contradicted by other admissions upon the pleadings, which show that the deeds were so made; and if the defendants would take advantage of an objection of that kind, they should do so, not by denial, but by a statement of new matter, showing to the court and opposite party wherein the conveyance was not made in conformity with the conditions of the bond.

It is admitted, that the bond was given by which Taylor agreed to execute the deeds to Steele upon the payment of $25,000 dollars; it is admitted, that Steele paid the money to Taylor, and that Taylor made the conveyance to Steele of the premises agreed to be conveyed; and yet it is denied that that conveyance was made in conformity with the bond. Such pleading is bad under any practice, for same reasoning, indirectly bearing upon this. (See 1 Monell's Practice, 559, 570–'1.)

It is urged, in an able argument of defendants' counsel, that the bond given by Taylor to Steele was forfeited on the part of Steele by reason of his neglect to perform, &c.; but the pleadings, on the contrary, as they now stand, show that the bond was not forfeited, but was in full force.

It seems to be regarded as a matter of course by counsel, that the whole chancery case referred to is before me, and made part of the pleadings. How the question would be affected if this were so, I do not decide; for I am quite clear that I can refer to that record for no other purpose than that which is specified in the pleadings in this case. It is alleged in the answer that Taylor withdrew his defence; but it does not appear what the defence was, if any was ever made; nor is any reference made to the answer setting it forth. But suppose such an answer was made, and that it is new matter of record in this court,

and that in it Taylor swore that the bond was forfeited, I know of no principle of law or practice in pleading which would permit me to connect it with the pleadings in this cause. I seems to me absurd to suppose I can take the answer of Taylor in that suit, to which no reference is made, and annex it to the answer of the defendants in this, even if doing so would supply all defects in the defence. The counsel also urges, that these defendants were properly made defendants in the chancery suit, and that having been dismissed from that suit on motion of this plaintiff, he is barred the right of following them here. The objection before stated, if well taken, is also a sufficient answer to this position. The pleadings in this case have not placed the merits of the chancery suit before me, nor the records of it, except for one single purpose, and that is, as to whether there was or was not a decree of conveyance. I cannot review the trial of that cause, but only look upon the record to learn the result, and in this only as to the decree. The denial that the deeds were made in obedience to the decree of court, or that the court ever made any decree, is immaterial, and does not aid the defence. It appears in the deed as part consideration; but the 25,000 dollars stipulated by the bond is a sufficient consideration without the decree, if there is no other objection, to pass the title; and whether a decree was or was not made, cannot in my judgment affect the question under consideration. The plaintiff holds his title, if at all, by virtue of the bond and a compliance with its conditions; and as the matter now stands upon the face of the pleadings, the voluntary conveyance of Taylor for the 25,000 dollars' consideration would have passed to Steele a title quite as perfect as if the conveyance had been made in obedience to a decree of court, because the decree, if any had been made, could not affect the title of these defendants, who were not parties to the record. The demurrer must be sustained, and the defendants have 20 days to file an amended answer.

M. SHERBURNE, *Judge.*

Dec. 26, 1854.

The foregoing endorsed: "District court, county of Ramsey.—Franklin Steele against James H. Trader and others.—Opinion of court upon demurrer of plff. to answer of deft.—Filed Dec. 26, 1854."

GEO. W. PRESCOTT, *Clerk.*

MINNESOTA TERRITORY,
District court, 2d district, for the county of Ramsey.

FRANKLIN STEELE
against
DAVID A. SECOMBE. } Answer.

The answer of David A. Secomb, one of the defendants in the above entitled action, to the complaint of the plaintiff herein, respectfully shows to this court, that the said defendant claims to be and is the owner of one undivided half part of a certain piece or parcel of land, situate, lying, and being in said county, described as follows, to wit:

The strip of land between Main street, so called, in the town of St. Anthony Falls, as surveyed by William R. Marshall, and the Mississippi river, commencing at a point on said Main street, opposite the dividing line between lots numbered seventeen (17) and eighteen (18), in block numbered fifty (50), in said town, and extending to the upper boundary of said town, together with the riparian right to the same belonging; also the sawmills in the bed of said river, opposite block numbered forty-seven (47) in said town, as follows, to wit:

Sawmills known and designated as numbers one (1), two (2), three (3), four (4), and eight (8), in the block of said sawmills; also, one undivided fourth part of sawmills known and designated as number seven (7) in said block of sawmills.

That the said property above described is a part of the property which is described in the bond or agreement in writing, and in the two deeds of conveyance last mentioned and set forth in the complaint of the plaintiff in this action, as will appear, reference being had to the plot of said town of St. Anthony Falls, annexed to one of the said deeds. That the title of this defendant to the above described property is as follows, to wit:

The said property was granted and conveyed to this defendant and to John W. North, and their and each of their heirs and assigns, by the sheriff of said county, on the seventeenth day of May, 1853, by two deeds of conveyance on that day duly executed, acknowledged, and delivered by the said sheriff in pursuance of a sale of said property duly made by the said sheriff on the seventeenth day of March, 1853, upon and by virtue of a certain writ of execution duly issued out of this court, on the thirty-first day of January, 1853, upon a judgment duly rendered and docketed in this court, on the twenty-eighth day of January, 1853, in an action in this court, wherein this defendant was plaintiff, and Arnold W. Taylor, the person mentioned in the complaint in this action, was defendant, in favor of the said plaintiff, David A. Secombe, and against the said defendant, Arnold W. Taylor, for the sum of twelve hundred and fourteen dollars and thirty-five cents; which said deeds last mentioned were duly recorded in the office of the register of deeds in said county, on the said seventeenth day of May, 1853, in book "E" of deeds, on pages 575, 576, 577, 578, 579, and 580; and on the said seventeenth day of May, 1853, the said John W. North and Anna L. North, his wife, by deed duly executed, acknowledged, and delivered, remised, released, and forever quit-claimed unto this defendant, his heirs and assigns, all their right, title, and interest, in, to, and unto the said property so conveyed by the said sheriff unto the said John W. North as afore mentioned.

And this defendant further answering denies, that on the seventeenth day of January, one thousand eight hundred and fifty-two, the said plaintiff purchased of or from the said Arnold W. Taylor, all the interest of him, the said Arnold W. Taylor, or any part thereof, in the real estate before that time held and owned by him and the plaintiff as

tenants in common as in said complaint set forth, for the sum of twenty-five thousand dollars, or for any sum whatever, as is in said complaint alleged.

This defendant admits the execution, acknowledgment, and record of the certain bond or agreement in writing, mentioned and set forth in the said complaint, from and by the said Arnold W. Taylor to the said plaintiff.

But this defendant further answering says, that the said plaintiff utterly failed to perform the condition of the said bond or agreement in writing, on his part, as he was in and by the same bound to do, in order to entitle him to a performance thereof on the part of the said Arnold W. Taylor; and that by reason of the non-performance of the said bond or agreement in writing on the part of the said plaintiff, the said bond or agreement in writing became utterly void and of no effect; and that the said Arnold W. Taylor, by reason of the non-performance of the conditions of the said bond, on the part of the said plaintiff, was released from any obligations to perform the conditions of said bond on his part, and utterly refused so to do.

And this defendant further answering says, that after the said violation of said bond on the part of the said plaintiff, and after the said refusal of the said Arnold W. Taylor to perform the conditions of the said bond on his part, to wit, on the twenty-fifth day of May, 1852, the plaintiff in this action instituted an action in this court, sitting as a court of equity, against the said Arnold W. Taylor, to compel a specific performance on the part of the said Arnold W. Taylor, of the conditions of the said bond or agreement in writing mentioned and set forth in the complaint in this action. That on the said 25th day of May, 1852, the said plaintiff filed his bill of complaint in the said suit in chancery, and on the same day there was issued in the said suit a certain writ of injuction, and a certain subpœna to answer, and the sum of twenty-four thousand two hundred and forty dollars was paid into this court by the said plaintiff.

That on the eighteenth day of June, 1852, there was entered in the said suit in chancery an order for the said defendant to plead, answer, or demur to the said bill of complaint, within thirty days from the service of the said order.

That on the fifth day of July, 1852, the appearance of the said defendant, Arnold W. Taylor, was entered in the said suit in chancery; and on the seventeenth day of July, 1852, the answer of the said Arnold W. Taylor was filed in the said suit. That on the twenty-sixth day of July, 1852, a motion was made on the part of the said defendant, in the said suit in chancery, for an order dissolving the injunction therein, and for the appointment of a receiver, which said motion, on the twenty-eighth day of July, 1852, was denied by the court. That on the twenty-fourth day of March, 1853, the defendant in this action, David A. Secombe, petitioned the court in the said suit in chancery to be admitted as a party defendant in the said suit, and moved for an order

thereon; and on the same day, by an order of the court, made in the said suit in chancery, the prayer of the said petitioner, the said David A. Secombe, was granted, and the said David A. Secombe was admitted as a defendant in the said suit.

That on the same day, and before the presentation of the said petition, due notice of the presentation of the same, and of the motion thereon, was given to the said plaintiff, and further notice by him waived. That on the said twenty-fourth day of March, 1853, the said suit in chancery was noticed for trial at the then next term of said court, to be holden on the third Monday of April then next, on the said bill of complaint and answer, no other or further pleading having been filed in the said suit, and was placed on the calendar for said term.

That the said term of court was not holden by reason of the removal of the judge thereof, and the said suit in chancery remained on the calendar at issue as aforesaid, pending and undetermined. That on the 2d day of May, 1853, a motion was made in the said suit in chancery, on the part of the said plaintiff, for an order dismissing the petition of the said David A. Secombe, filed in the said suit on the twenty-fourth day of March, 1853, and vacating the order of court on that day, made in said suit, granting the prayer of said petition, which said motion, on the fourth day of May, 1853, was granted, and the said order made by the said court. That upon the argument of the said motion, there were read the affidavits of William Hollinshead, on the part of the said plaintiff, and of John Rollins, S. W. Farnham, David A. Secombe, and John W. North, on the part of the defendant, David A. Secombe. That on the sixth day of May, 1853, the said David A. Secombe, defendant in the said suit in chancery, duly appealed from the said order of court made in said suit on the said fourth day of May, 1853, to the supreme court of this Territory. That at the then next term of the said supreme court, which was holden in January, 1854, the said appeal was argued before and submitted to the said supreme court, and at the time of the commencement of this action, the said appeal was, and now is, pending and undetermined before the said supreme court. True copies of which said bill of complaint, writ of injunction, subpœna to answer, order to answer, entry of appearance, answer of defendant, motion to dissolve injunction, decision of same; petition of David A. Secombe, with notice to plaintiffs of presentation of the same; order of court granting the prayer of the said petitioner, notice of trial, motion of plaintiff to dismiss petition and vacate order, order of court granting said motion; affidavits of William Hollinshead, John Rollins, S. W. Farnham, David A. Secombe, and John W. North, read on said motion; notice of appeal of said David A. Secombe, from said order to the supreme court, and the points and authorities relied on by said appellant, as the same appear of record in the said suit in chancery, are contained in the printed paper book hereunto annexed, which, for that purpose is here referred to, and made a part of this answer.

And this defendant further answering says, that no proceeding what-

ever was taken by the said plaintiff in the said suit in chancery, from the twenty-sixth day of July, 1852, till the twenty-fifth day of April, 1853. And this defendant further answering denies, that the two conveyances last mentioned and set forth in the complaint in this action, or either of them, were made in pursuance of or in conformity with the bond or agreement in writing mentioned and set forth in said complaint, as is in said complaint alleged. And this defendant denies, that in a certain suit in chancery mentioned in said complaint, and specifically set up and pleaded in this answer, the court ordered, adjudged or decreed the said conveyances last mentioned and set forth in said complaint, or either of them, to be made, or that they or either of them were made in obedience to such decree, as in the said complaint alleged.

And this defendant further denies, that in the said suit in chancery the court has ever made any final order, judgment or decree whatever, as will more fully appear by the record and proceedings in said suit, reference being thereunto made in this answer for this purpose. And this defendant further answering says, that since the making of the order of court in the said suit in chancery in this court, on the fourth day of May, 1853, no proceeding whatever has ever been taken by this court in the said suit; but that the said suit in chancery, at the time of the commencement of this action, was and now is pending and undetermined in this court, being at issue on the said bill of complaint and answer.

This defendant further answering alleges, that after the said suit in chancery had been put at issue, and while it was at issue upon the said bill of complaint and answer, and after this defendant, David A. Secombe, and others, had purchased a large portion of the real property which was the subject-matter of the said suit in chancery, at the sheriff's sale as aforementioned, to wit, on or about the twenty-third day of March, 1853, the said plaintiff, Steele, and Arnold W. Taylor, aforesaid, both of whom were acquainted with the facts of the said sheriff's sale, conspired and colluded together for the purpose of defrauding this defendant and others who had purchased at said sheriff's sale, for a valuable consideration, a portion of the subject-matter of the said suit in chancery; and that the said plaintiff and Arnold W. Taylor, so conspiring and colluding together for the said purpose, on or about the twenty-third day of March, 1853, entered into an arrangement to settle the said suit in chancery between themselves, and without permitting the court to pass upon the subject-matter in controversy upon the issue then joined in the said suit; and that by the arrangement so made, the said Taylor agreed to withdraw his said answer in the said suit in chancery, and allow the bill of complaint in said suit to be taken as confessed by and against him, the said Taylor, and to suffer the said Steele to take a decree in said suit to the effect and extent of the whole prayer of the said Steele in his said bill of complaint.

And that by the said arrangement so made, the said Taylor agreed to sell and convey to the said Steele the property mentioned and de-

scribed in the said bond or agreement in writing, and which was the subject-matter of the said suit in chancery, for a consideration which was less, and on terms which were distinct and different from the consideration and terms contained and agreed upon in said bond or agreement in writing; and that the said two conveyances in the complaint in this action mentioned and set forth, made by George Barstow, as the attorney in fact of Arnold W. Taylor, were made by virtue of and to carry out and consummate the said agreement, made on the said twenty-third day of March, 1853, for the said distinct, different, and less consideration, and on the said different terms, for the purpose of defrauding this defendant and others who were prior purchasers, for a valuable consideration, of a portion of the property so conveyed by the said Taylor aforesaid.

And this defendant further answering denies, that the plaintiff ever paid to the said Arnold W. Taylor the said sum of twenty-five thousand dollars, which was the purchase-money required to be paid by him for said real property, in and by the terms of the said bond, as he was required, or in any manner whatever, as is recited in the deeds made by the said George Barstow to the plaintiff, and as is alleged in the complaint in this action.

Wherefore, this defendant says that the said two conveyances last mentioned and set forth in the complaint in this action are wholly null and void so far as relates to this defendant, and therefore this defendant demands the judgment of this court determining the title of the said property first mentioned and described in this answer, and claimed by this defendant, to be in this defendant, and requiring the said plaintiff to release his adverse claim to an estate or interest in the said property to this defendant; or in the event of his failure or refusal so to do, that such judgment shall stand and be recorded in the place of such release, and perpetually enjoining and restraining the said plaintiff from further asserting or making such adverse claim to the said property, or intermeddling in any manner with the said property or the title thereto; and requiring the said plaintiff to deliver possession of the said property to this defendant; and giving to this defendant such other or further relief as the nature of the case may require, and to this court may seem just.

NORTH & SECOMBE,
Attorneys for Defendants.

MINNESOTA TERRITORY
County of Ramsey, ss:

David A. Secombe, the defendant named in the foregoing answer, being duly sworn says, that this answer is true of his own knowledge, except as to matters herein stated on his information or belief, and as to those matters that he believes it to be true.

DAVID A. SECOMBE.

Sworn to this 6th day of January, 1855, before me.

SAMUEL M. MUX,
Notary Public, Ramsey County, Min. Ter.

The foregoing endorsed: "Territory of Minnesota district, 2d district, county of Ramsey—Franklin Steele against David A. Secombe and others—Answer of David A. Secombe—Due service of a copy of the within answer is hereby acknowledged, January 8th, 1855—Rice, Hollinshead and Becker, atty's for pl'ffs.

GEO. W. PRESCOTT, *Clerk.*

Filed January 8, 1855.

NORTH & SECOMBE,
Attys. for Defts.

IN THE SUPREME COURT.

Appeal from District Court.

FRANKLIN STEELE, respondent,
against
ARNOLD W. TAYLOR et als., appellants. } Paper Book.

NORTH & SECOMBE,
Solicitors for Appellants and of Counsel.

Copies of Papers certified and returned by the District Court.

Copy of Bill of Complaint.

FRANKLIN STEELE
against
ARNOLD W. TAYLOR. } In Chancery.

First Judicial district, Ramsey county.

To the Honorable JEROME FULLER:

Complaining, showeth unto your honor your orator, Franklin Steele, of the county of Dakota and Territory of Minnesota, that Arnold W. Taylor, of Dorchester, in the State of Massachusetts, the above named defendant, and your orator and Ard Godfry, were, at and before the 8th day of November, A. D. 1851, seized as tenants in common of the following described pieces or parcels of land, to wit: All of the town of St. Anthony Falls lying upon the eastern shore of the Mississippi river, according to the plat or plan of said town, recorded in the office of the register of deeds of Ramsey county aforesaid, as by the plat thereof, which is here referred to, will more fully appear; one undivided half of which said town was owned by said defendant, and nine undivided twentieths was owned by said Franklin Steele, and one undivided twentieth was owned by said Ard Godfry, which said town contains about two hundred and fifty acres of land, more or less, and is embraced in certain patents granted by the Government of the United States to your orator, Franklin Steele, and certain deeds from H.

H. Sibley and wife, and Cavin A. Tuttle and wife, to your orator as aforesaid, excepting and reserving all lots in said town which had been conveyed by Arnold W. Taylor, the above defendant, Ard Godfry aforesaid, and your orator, not exceeding, as near as your orator can now state, two hundred and sixty-four lots; also the entire water privilege belonging to the afore-mentioned premises, and the dam erected upon said premises, extending from the eastern shore of the Mississippi river to islands in the said river, known and designated as Hennepin and Nicollet islands, and the appurtenances thereto belonging; also the entire water front and water privileges upon the east side of the middle island, called Nicollet island, and so much of the lower end of said island as may be necessary to secure said entire water privileges; also the upper island, called Boom or Bouttineau's island, and the lower island called Hennepin island.

And your orator further shows to your honor, that difficulties and misunderstandings arising between the above defendant, Arnold W. Taylor, and your orator, Franklin Steele, in regard to the management and disposition of the property above described, the defendant, on the 8th day of November, A. D. 1851, commenced a suit in the district court of Ramsey county against your orator, Franklin Steel, on a covenant of warranty which he alleged was contained in a deed from your orator, Steel, to said defendant; and also on the 15th day of December, A. D. 1851, the said defendant commenced another suit against your orator and Ard Godfry, for the use and occupation of the premises described above as the mills, dam, and its appurtenances, and for the value of the materials alleged to have been furnished by said defendant.

And your orator further shows to your honor, that the parties, complainant and defendant hereto, being anxious to adjust their difficulties, and desirous of effecting a settlement of their controversies, and the said defendant also being desirous and willing to dispose of, and sell his interest in, the property aforesaid, entered into an agreement or bond to your orator, Franklin Steel, for the sale thereof to him, which agreement or bond was reduced to writing, and signed and sealed by the said Arnold W. Taylor, the above named defendant, and is in the words and figures following, to wit:

Know all men by these presents, that I, Arnold W. Taylor, of Dorchester, Massachusetts, am held and firmly bound unto Franklin Steel, of Dakotah county, in the Territory of Minnesota, in the sum of twenty thousand dollars, to be paid to the said Steel, to which payment, well and truly to be made, I bind myself, my heirs, and assigns, firmly by these presents.

Sealed with my seal, and dated this seventeenth day of January, 1852.

The conditions of this obligation are as follows, to wit: The said Arnold W. Taylor agrees to sell to the said Franklin Steel all his interest in the property at St. Anthony Falls, formerly purchased of said Steel, (except what is already sold jointly by all the proprietors,) for

the sum of twenty-five thousand dollars, one thousand dollars of which is to be paid on the ensealing and delivery of these presents, and twenty-four thousand dollars to be paid in sixty days from date hereof, at the Merchants' or Suffolk Bank in Boston, and a certificate of deposite of the same afterwards to be furnished to said Taylor, at St. Anthony Falls. Said Taylor is to keep all moneys received by him from said Steel on account of rents, and said Steel is to assume all contracts already entered into by said Taylor, included in the schedule hereunto annexed; to take and pay for the store erected by said Taylor; to pay all taxes on said property; to refund to said Taylor all moneys advanced by said Taylor on the aforesaid contracts; and to pay to Robert Bunton his wages and expenses, as agreed upon by said Taylor, to wit: Three dollars per day, and travelling expenses and board, from the time he left Boston with said Taylor until he shall return to Boston.

In case the said twenty-four thousand dollars be not paid at the end of the sixty days, then the said one thousand dollars to be paid on the ensealing and delivering of these presents is to be forfeited to said Taylor. But on the payment of the said twenty-four thousand dollars, at the time and in the manner above mentioned, the said Taylor is to give a good and sufficient warrantee deed of all of the above-mentioned property purchased of said Steel, (being the undivided half of the water-power, mills and village, or town-lots, and other property at St. Anthony Falls, as described in the deeds of conveyance from said Steel to said Taylor,) excepting the two islands mentioned in one of said deeds, to wit, "Hennepin," or the lower island, and "Boom island;" of which said islands said Taylor is to give a quit-claim deed, and excepting that portion of said property already sold as above stated; and also to assign to said Steel his interest in all bonds and mortgages, together with other choses in action, taken on the sale of any portion of said property which are now held by them, and to account for all proceeds of such sales received by him; and in case any of said bonds and mortgages have been disposed of by said Taylor, he shall account for the same to said Steel.

Said Taylor is to continue in the possession and use of his mills until the above-mentioned twenty-four thousand dollars is paid, and the conditions of this bond are fulfilled; and the suits now pending between said Taylor and Steel are to continue the same as though this contract was not made, until after the payment of the said twenty-four thousand dollars.

And after all the above conditions are complied with by said Steel, then the above-mentioned suits are to be discontinued, each paying his own costs.

In case any of the persons who have entered into contracts with said Taylor shall choose to abandon their contracts, they shall be at liberty so to do, and said Steel shall pay them, severally, a just and fair compensation for the work already done.

Now, if upon the payment of the above-mentioned twenty-four

thousand dollars, in manner as above provided, the said Taylor shall furnish to said Steel a good and sufficient warrantee deed of the above described property, (except the above named islands, and of them a quit-claim deed,) and on the fulfilment of the above conditions by said Steel, if he shall fulfil the conditions of the above obligations on his part, then this obligation to be void; otherwise to remain in full force and virtue.

In witness whereof I have hereunto set my hand and seal, the day and year first above written.

(Signed) ARNOLD W. TAYLOR. [L. S.]

In presence of DAVID A. SECOMBE,
J. W. NORTH.

MINNESOTA TERRITORY, *County of Ramsey, ss:*

On this seventeenth day of January, 1852, personally appeared before me Arnold W. Taylor, to me known to be the person named in and who executed the above bond, and acknowledged that he executed the same freely and for the uses and purposes therein expressed.

Dated January 17th, 18—2.

J. W. NORTH, *Notary Public.*

Schedule of Contracts.

1st. Contract with Farnham & Stimson—hereto annexed.

2d. Contract with R. C. Rogers—hereto annexed.

3d. Contract with John McDonald—hereto annexed.

4th. A verbal contract with S. W. Farnham and Company, to saw their logs the next season by the thousand, or rent them a mill to saw them, or buy their logs.

5th. A verbal contract with Joseph Libby, the same as with S. W. Farnham and Company.

6th. A contract with Joseph Libby, for repairing the dam, and for timber for building mills, which contract was entered into in the fall of 1850.

Article of agreement made and entered into this 20th day of November, 1851, between Arnold W. Taylor, of Dorchester, Mass., and John McDonald, of St. Anthony Falls, witnesseth:

That the said McDonald, for the consideration hereinafter mentioned, agrees to and with the said Taylor to build two sawmills on the dam at St. Anthony Falls—doing all the work in building the frame, gearing, and putting said mills in complete order for running, for the sum of one thousand dollars per mill.

Said McDonald is to commence the work immediately, and to have said mills completed and ready for sawing, with platform and cart-way below the mills, and slip and gearing for drawing up the logs at the head of the mills, on or before the first day of June next. Said mills are to be built in a good and workmanlike manner, and in all respects equal to the mills already built on said dam.

Said McDonald is to have the use of a shop, (which said Taylor is to build,) during the winter, and until said mills are completed.

Said Taylor is to furnish all lumber and materials of every description for said mills, as fast as the same are wanted—the timber to be taken in the pond and on the platform below the mills now in use; and the castings to be furnished as soon as navigation opens in the spring; and is to pay the said McDonald five hundred dollars during the winter as the work progresses, five hundred dollars when the work is completed, and the balance on the 16th day of August next.

In witness whereof, we have hereunto set our hands and seals the day and year first above written.

(Signed) JOHN McDONALD, [L. S.]
ARNOLD W. TAYLOR. [L. S.]

In presence of—J. W. NORTH.

Article of agreement made and entered into this 21st day of October, 1851, between Arnold W. Taylor, of Dorchester, Massachusetts, of the first part, and Sumner W. Farnham and Charles F. Stimson, known by the style and firm of Farnham and Stimson, of St. Anthony Falls, of the second part, witnesseth:

That the said Taylor agrees to saw in the mills at St. Anthony Falls, for said Farnham and Stimson, six hundred and one thousand feet of logs, now lying in the Boom above said mills, for four dollars per thousand feet—said logs are to be all sawed by or before the first day of June next, according to orders furnished by the parties of the second part.

In case said Taylor should not saw all or any part of said logs, he hereby purchases and agrees to pay, for all he does not saw, the sum of four dollars and a half per thousand feet, which payment shall be due on the first day of June next.

And the amount of logs to be paid for by said party of the first part, shall be determined by scaling and measurement, to be made by Caleb D. Dorr, or some suitable person agreed on by the parties, or selected by J. W. North, after said Taylor shall have discontinued sawing on the same.

Said Farnham and Stimson are to make payment for sawing said logs, as often as one hundred thousand feet shall be sawed. Said Farnham and Stimson are to have the privilege of one-half of the mill yard and rafting ground, and are to remove the lumber, slabs, and edgings as fast as the same are sawed.

In witness whereof, we have hereunto set our hands and seals the day and year first above written.

(Signed) ARNOLD W. TAYLOR, [L. S.]
FARNHAM & STIMSON, [L. S.]

Signed, sealed and delivered in the presence of—
J. W. NORTH.

thousand dollars, in manner as above provided, the said Taylor shall furnish to said Steel a good and sufficient warrantee deed of the above described property, (except the above named islands, and of them a quit-claim deed,) and on the fulfilment of the above conditions by said Steel, if he shall fulfil the conditions of the above obligations on his part, then this obligation to be void; otherwise to remain in full force and virtue.

In witness whereof I have hereunto set my hand and seal, the day and year first above written.

(Signed) ARNOLD W. TAYLOR. [L. S.]

In presence of DAVID A. SECOMBE,
J. W. NORTH.

MINNESOTA TERRITORY, *County of Ramsey, ss:*

On this seventeenth day of January, 1852, personally appeared before me Arnold W. Taylor, to me known to be the person named in and who executed the above bond, and acknowledged that he executed the same freely and for the uses and purposes therein expressed.

Dated January 17th, 18—2.

J. W. NORTH, *Notary Public.*

Schedule of Contracts.

1st. Contract with Farnham & Stimson—hereto annexed.

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5th. A verbal contract with Joseph Libby, the same as with S. W. Farnham and Company.

6th. A contract with Joseph Libby, for repairing the dam, and for timber for building mills, which contract was entered into in the fall of 1850.

Article of agreement made and entered into this 20th day of November, 1851, between Arnold W. Taylor, of Dorchester, Mass., and John McDonald, of St. Anthony Falls, witnesseth:

That the said McDonald, for the consideration hereinafter mentioned, agrees to and with the said Taylor to build two sawmills on the dam at St. Anthony Falls—doing all the work in building the frame, gearing, and putting said mills in complete order for running, for the sum of one thousand dollars per mill.

Said McDonald is to commence the work immediately, and to have said mills completed and ready for sawing, with platform and cart-way below the mills, and slip and gearing for drawing up the logs at the head of the mills, on or before the first day of June next. Said mills are to be built in a good and workmanlike manner, and in all respects equal to the mills already built on said dam.

Said McDonald is to have the use of a shop, (which said Taylor is to build,) during the winter, and until said mills are completed.

Said Taylor is to furnish all lumber and materials of every description for said mills, as fast as the same are wanted—the timber to be taken in the pond and on the platform below the mills now in use; and the castings to be furnished as soon as navigation opens in the spring; and is to pay the said McDonald five hundred dollars during the winter as the work progresses, five hundred dollars when the work is completed, and the balance on the 16th day of August next.

In witness whereof, we have hereunto set our hands and seals the day and year first above written.

(Signed) JOHN McDONALD, [L. S.]
ARNOLD W. TAYLOR. [L. S.]

In presence of—J. W. NORTH.

Article of agreement made and entered into this 21st day of October, 1851, between Arnold W. Taylor, of Dorchester, Massachusetts, of the first part, and Sumner W. Farnham and Charles F. Stimson, known by the style and firm of Farnham and Stimson, of St. Anthony Falls, of the second part, witnesseth:

That the said Taylor agrees to saw in the mills at St. Anthony Falls, for said Farnham and Stimson, six hundred and one thousand feet of logs, now lying in the Boom above said mills, for four dollars per thousand feet—said logs are to be all sawed by or before the first day of June next, according to orders furnished by the parties of the second part.

In case said Taylor should not saw all or any part of said logs, he hereby purchases and agrees to pay, for all he does not saw, the sum of four dollars and a half per thousand feet, which payment shall be due on the first day of June next.

And the amount of logs to be paid for by said party of the first part, shall be determined by scaling and measurement, to be made by Caleb D. Dorr, or some suitable person agreed on by the parties, or selected by J. W. North, after said Taylor shall have discontinued sawing on the same.

Said Farnham and Stimson are to make payment for sawing said logs, as often as one hundred thousand feet shall be sawed. Said Farnham and Stimson are to have the privilege of one-half of the mill yard and rafting ground, and are to remove the lumber, slabs, and edgings as fast as the same are sawed.

In witness whereof, we have hereunto set our hands and seals the day and year first above written.

(Signed) ARNOLD W. TAYLOR, [L. S.]
FARNHAM & STIMSON, [L. S.]

Signed, sealed and delivered in the presence of—
J. W. NORTH.

Copy of Contract entered into by Arnold W. Taylor and Richard C. Rogers.

Article of agreement made and entered into this 20th day of November, 1851, between Arnold W. Taylor, of Dorchester, Massachusetts, and Richard C. Rogers, of St. Anthony Falls, witnesseth:

That the said Rogers, for the consideration hereinafter mentioned, agrees to and with the said Taylor to build two sawmills on the dam at St. Anthony Falls, doing all the work in building the frame and gearing, and putting said mills in complete order for running, for the sum of one thousand dollars per mill. Said Rogers is to commence the work immediately, and to have said mills completed and ready for sawing, with platform, and cartway below the mills, and slip and gearing for drawing up logs at the head of the mills, on or before the first day of June next.

Said mills are to be built in a good and workmanlike manner, and in all respects equal to the mills already built on said dam.

Said Rogers is to have the use of the shop near the blacksmith shop during the winter, and until said mills are completed.

Said Taylor is to furnish all lumber and materials of every description for said mills, as fast as the same are wanted—the timber to be taken in the pond and on the platform below the mills now in use, and the castings to be furnished as soon as the navigation opens in the spring—and is to pay the said Rogers five hundred dollars during the winter as the work progresses, five hundred dollars when the work is completed, and the balance on the 16th day of August next.

In witness whereof, we have hereunto set our hands and seals the day and year first above written.

(Signed) R. C. ROGERS, [L. S.]
ARNOLD W. TAYLOR, [L. S.]

In the presence of—
DAVID A. SECOMBE,
ROBERT BUNTON.

And your orator further shows, that said bond or writing obligatory was duly acknowledged, and on the 19th day of January, in the year 1852, duly recorded in the office of the register of deeds for the county of Ramsey, in book A, of bonds, on pages 160, 161, 162, 163, 164, 165, 166 and 167, at 10 o'clock a. m., as by the said writing obligatory, and the certificates of the acknowledgment, and the registry thereof endorsed thereon, will more fully appear.

And your orator, Franklin Steele, further showeth, that he did, on the ensealing and delivery of said agreement or bond, to wit, on the 17th day of January, A. D. 1852, pay over to the said Arnold W. Taylor, the above defendant, one thousand dollars, as part payment of the purchase-money and part performance, on his part, of the conditions of said agreement or bond.

And your orator, as aforesaid, further showeth, that on the 17th day of March, A. D. 1852, he did tender, by his agents, J. W. Clark & Co., of the city of Boston, in the State of Massachusetts, to the Suffolk Bank of said city, the sum of twenty-four thousand dollars, and requested the officers of said bank to receive said money and give him a certificate of deposite therefor; but the officers of said bank refused to receive said money and give a certificate of deposite therefor, alleging that they were not in the habit of issuing certificates of deposits, as it was contrary to the rules and regulations of said bank, and that, therefore, they must decline the request.

And your orator, Franklin Steele, further showeth to your honor, that he did, on the same day above-mentioned, and after the refusal of the said Suffolk Bank to receive said twenty-four thousand dollars and give a certificate of deposite therefor, by his agents, J. W. Clark & Co., as aforesaid, tender to the Merchants' Bank, of the city of Boston, aforesaid, the sum of twenty-four thousand dollars, as required by the conditions of said agreement or bond, and requested the officers of said bank to receive said sum of money and give a certificate of deposite therefor; but the officers of said bank refused to receive said money as requested, alleging that they were not in the habit of issuing certificates of deposite, as it was contrary to the rules and regulations of said bank, and that, therefore, they must decline the request.

And your orator, as aforesaid, further showeth to your honor, that immediately upon the refusal of said Suffolk Bank and Merchants' Bank of the city of Boston aforesaid, to receive said money and give a certificate of deposite therefor, he did, by his agents aforesaid, on the 17th day of March, 1852, tender to the Bank of Commerce of the said city, the said sum of twenty-four thousand dollars, and received from said bank a certificate of deposite, of which the following is a copy:

"Dollars, *Bank of Commerce.* Number
$24,000. 365.

BOSTON, *March 17th*, 1852.

J. W. Clark and Co. have deposited twenty-four thousand $\frac{00}{100}$ dollars, to the credit of Franklin Steel, and payable on return of this certificate correctly endorsed.

(Signed) SAMUEL LITTLE,
Teller,
W. H. FOSTER,
Cashier."

And your orator, Franklin Steel, further showeth to your honor, that immediately after he had returned with the certificate of deposite of which the above is a copy, to wit, on or about the 5th day of May, A. D. 1852, he tendered to the said defendant, at the town of St. Anthony Falls, the certificate aforesaid, after first endorsing his name upon the back thereof, and demanded of the said defendant a good

and sufficient deed of the premises above described, according to the terms of said agreement or bond, and a specific performance of the obligations entered into by said defendant, and also a full performance of the stipulations therein mentioned to be done and performed by him, the said defendant; but he, the said defendant, peremptorily refused to deliver to your orator, Franklin Steele, a good and sufficient deed of said premises, according to the terms of said agreement or bond, or to perform any of the stipulations entered into by him therein.

And your orator, Franklin Steele, well hoped that the said defendant would have complied with such your orator's request, as in justice and equity he ought to have done.

And your orator, as aforesaid, further showeth to your honor, that when said defendant refused to receive said certificate of deposite of the said Bank of Commerce, transferred, endorsed and tendered as aforesaid, and refused to comply with the obligations of said agreement or bond above mentioned, your orator immediately afterwards, to wit, on the 20th day of May, A. D. 1852, tendered to the said defendant the sum of twenty-four thousand two hundred and forty dollars, lawful money of the United States, being the amount of money to be paid by said Steele, and the difference in exchange between the town of St. Anthony Falls and the city of Boston aforesaid, and again demanded a good and sufficient deed of the premises above described, according to the terms of said agreement or bond, and a specific performance by said defendant of the obligations therein entered into by him:

But the said defendant peremptorily refused to deliver to your orator, Franklin Steele, a good and sufficient deed, according to the terms of said agreement or bond, or to perform any of the obligations entered into by him.

And your orator, Franklin Steele, well hoped that the said defendant would have complied with your orator's demand, as in justice and equity he ought to have done.

And your orator, Franklin Steele, further shows unto your honor that he has been greatly injured and damaged by reason of the non-fulfilment of the conditions of said bond or writing obligatory on the part of said defendant.

And your orator further shows to your honor, that the said defendant held, previous to the 8th day of November, 1851, and now holds, bonds, mortgages, and promissory notes, executed by various persons to your orator, Ard Godfry, and the said defendant, for the purchase-money of village lots in the town of St. Anthony Falls, and other property owned and sold by your orator, and Godfry and said defendant.

And your orator further shows unto your honor, that he has, since the 20th day of May aforesaid, applied to said defendant for an assignment of said bonds, mortgages and choses in action according to the tenor of said agreement or writing obligatory, and your orator well hoped that the defendant would have complied therewith, as in equity and good conscience he ought to have done.

But now, so may it please your honor, the said defendant, combin-

ing and confederating with divers persons unknown, and whom, when discovered, your orator prays may be inserted herein as defendants, and made parties hereto with proper and apt words to charge them, how to injure and oppress your orator.

The said defendant does still refuse to receive the said sum of twenty-four thousand two hundred and forty dollars, and comply with the obligations entered into by him in said agreement or bond, and at times pretends that the conditions of said agreement or bond have not been complied with on the part of your orator, Franklin Steele, inasmuch as he did not deposit the said sum of twenty-four thousand dollars in the Bank of Suffolk or Merchants' Bank in the city of Boston aforesaid, and pretends that he, the said defendant, was not obliged to take a certificate of any other bank than those mentioned in the said agreement or bond; and also, that the said defendant was not under any obligation to receive the said sum of twenty-four thousand two hundred and forty dollars, being the full amount required to be paid, and the difference in exchange between the town of St. Anthony Falls and the said city of Boston, and that, therefore, he, the said defendant, was discharged from his said agreement or bond above mentioned.

Whereas your orator, Franklin Steele, expressly charges the truth to be, that your orator has fulfilled, on his part, the conditions of said agreement or bond, as in equity or in good conscience he was required to do. And that he has offered and is now ready to comply with the terms of said agreement or bond in all respects. All of which actings, doings, pretences, and refusals in the premises are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator.

In tender consideration whereof, and for as much as your orator is remediless in the premises at and by the strict rules of common law, and is only relievable in a court of equity, where matters of this nature are properly cognizable and relievable:

To the end, therefore, that the said defendant may full, true, direct, and perfect answer make upon his corporal oath, according to the best of his knowledge, remembrance, information, and belief, to all and singular the matters and charges aforesaid, and that as fully and particularly in every respect as if the same were here repeated, and he thereto particularly interrogated.

And that the said defendant may discover and set forth a full, true, and particular account of all and singular the bonds, mortgages, and choses in action, held by him or under his possession and control, heretofore referred to.

And that he, the said defendant, Arnold W. Taylor, his attorneys, solicitors, counsellors, or agents, may be restrained by injunction, issuing out of this court, from selling, conveying, encumbering, or otherwise disposing of, or intermeddling with the mill and real property hereinbefore described, and also the bonds, mortgages, and choses in action aforesaid, or from collecting any sums due or to become due thereon; and also from proceeding at law in the suits heretofore set forth.

That the defendant be decreed to assign and transfer to your orator, Steele, all his interests in the bonds, mortgages, and choses in action aforesaid; and also be decreed to convey by good and sufficient deed of conveyance, in accordance with the terms of said bond or writing obligatory, the undivided one-half part of the mill and real property therein referred to, and hereinbefore described.

Your orator, Steele, hereby offering to pay to said defendant, under the direction of this court, the said sum of twenty-four thousand two hundred and forty dollars, which sum he brings herewith into this court, and hereby also offering to perform each and every of the obligations imposed on him by the terms of said bond or writing obligatory.

And in case said defendant shall neglect or refuse to assign said bonds, mortgages, and choses in action, and deliver the same to your orator, Steele, or to convey the mill and real property as aforesaid, that then the decree of this court may stand in place of such assignment and conveyance. And that said defendant may be decreed to pay to your orator, Steele, such compensation and damages as in equity and good conscience he is entitled to have for a breach of the covenant contained in said bond or writing obligatory by said defendant.

And that your orator may have such further relief or such other relief as the nature of his case shall require, and shall be agreeable to equity:

May it please your honor to grant unto your orator the writ of injunction, issuing out of and under the seal of this court, directed to the said Arnold W. Taylor, his attorneys, solicitors, counsellors, and agents, restraining and enjoining them as aforesaid. May it please your honor to grant unto your orator its writ of subpœna, issuing out of and under the seal of this court, to be directed to the said Arnold W. Taylor, commanding him by a certain day and under a certain penalty therein to be inserted, to be and appear before your honor in this court, then and there to answer the premises, and further to stand to and abide such order and decree therein as shall be agreeable to equity and good conscience. And your orator will ever pray, &c.

AMES & NELSON, and
RICE, HOLLINSHEAD & BECKER,
Solicitors for Complainant and of Counsel.

TERRITORY OF MINNESOTA,
County of Ramsey, ss:

Personally appeared before me Franklin Steele, and made oath that he had heard the foregoing bill of complaint read, and knew the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be on his information and belief, and as to those matters he believes it to be true.

FRANKLIN STEELE.

Sworn to and subscribed before me, this 25th day of May, 1852.

ORLANDO SIMONS,
Justice of the Peace.

Copy of Order of Court.

District Court—In Chancery, May 28, 1852.

FRANKLIN STEELE
vs.
ARNOLD W. TAYLOR.

Ordered, that the twenty-four thousand two hundred and forty dollars paid into court in this suit be deposited and remain in the safe of the Minnesota outfit, subject to the order of the court, and that Charles W. Borup keep safely and dispose of the same, subject to such order.

J. FULLER, *District Judge.*

Copy of Receipt for money paid into Court.

Received on deposit, under the order of the district for the county of Ramsey, twenty-four thousand two hundred and forty dollars, which sum is deposited (in the safe of the Minnesota outfit) in my keeping, subject to the order of said district court. Which sum was paid into court in the cause wherein Franklin Steel is plaintiff, and Arnold W. Taylor is defendant.

CH. W. BORUP.

ST. PAUL, *May 29th*, 1852.

The erasure of the words "in the safe of the Minnesota outfit," in the above receipt, was made on the 26th day of June, 1852, to correspond with an amended order of court in relation to the deposit, and which receipt, without the words erased, is in all respects true at this date.

Dated June 26th, 1852.

CH. W. BORUP.

Copy of Bond for Writ of Injunction.

Know all men by these presents, that I, Franklin Steel, of the county of Dakota and Territory of Minnesota, and Ard Godfry, of Ramsey county, in said territory, are held and firmly bound unto Arnold W. Taylor, of Dorchester, Massachusetts, in the penal sum of five thousand dollars; for which payment well and truly to be made, we do bind ourselves, our heirs, executors and administrators, firmly by these presents, sealed with my seal, and dated this 25th day of May, 1852.

Whereas, the above bounden Franklin Steele has filed his bill of complaint against the said Arnold W. Taylor, in the district court for the first district and county of Ramsey, in chancery, praying, among other things, for a writ of injunction to restrain the defendant therein, Arnold W. Taylor, from selling, conveying, incumbering, or otherwise disposing of, or intermeddling with, certain mill and real property therein described, and also certain bonds, mortgages and choses in action therein described, and also from proceeding at law against said

Steele, in certain suits commenced in the district court aforesaid, by said defendant; one of which is against said Steele alone, and the other against said Steele and Ard Godfry. Now, therefore, the condition of this obligation is such, that if the said Franklin Steele shall pay to the said Arnold W. Taylor, and his legal representatives, all moneys which may be recovered by him or them against said Steele, or the collection of which may be stayed by such writ of injunction in such actions at law for debt and damages and for costs therein; and also pay all such costs and damages as may be sustained by said Taylor, by the reason of issuing of said writ of injunction, and shall in all respects perform and abide the orders and decrees of said court of chancery in the premises: then this obligation to be void; otherwise to remain in full force and virtue.

FRANKLIN STEELE, [L. S.]
ARD GODFRY. [L. S.]

Executed in presence of—
ORLANDO SIMONS.

R. R. NELSON, witness as to signatures after execution.

Acknowledged before me, this 25th day of May, 1852.
ORLANDO SIMONS,
Justice of the Peace.

TERRITORY OF MINNESOTA,
Ramsey County, ss:

Franklin Steele and Ard Godfry, being duly sworn, severally say, that they are, and that each of them is, worth the sum of two thousand five hundred dollars over and above all property exempt from sale, execution, and all debts which they owe, and all liabilities which they have incurred; and that they are freeholders and residents of the territory aforesaid.

FRANKLIN STEELE,
ARD GODFRY.

Sworn to and subscribed before me, this 25th day of May, 1852.
ORLANDO SIMONS,
Justice of the Peace.

Approved May 25th, 1852.
J. FULLER,
Dist. Judge.

Copy of Writ of Injunction.

TERRITORY OF MINNESOTA,
The District Court for the 1st district, Ramsey county.

To Arnold W. Taylor, and his Attorneys, Solicitors, Counsellors, and Agents, and every of them, greeting:

Whereas, Franklin Steele has filed his certain bill in chancery in the district court within and for the county of Ramsey, and Territory

of Minnesota, against you, to be relieved touching the matters therein complained of, and which bill is still there pending; we, therefore, in consideration of the premises, and of the particular matters in said bill set forth, do, in the name of the United States, strictly enjoin and command you, the said Arnold W. Taylor, and all and every the persons before mentioned, and each and every of you, under the penalty of the law thence ensuing, that you, and every of you, do from henceforth altogether, absolutely, desist, and refrain from selling, conveying, incumbering, or otherwise disposing of, or intermeddling with, the mill and real property described as follows, or any portion thereof. All the town of St. Anthony Falls lying upon the eastern shore of the Mississippi river, according to the plat or plan of said town recorded in the office of the register of deeds of Ramsey county, which said town containing about two hundred and fifty acres of land, more or less, and is embraced in certain patents from the Government of the United States to Franklin Steele; and in certain deeds from H. H. Sibley and wife, and Calvin Tuttle and wife, to said Steele; also the island called Boom or Bottineau's island, and the lower island called Hennepin island, and the mills, dam, and water privileges, connected with said islands; and Nicollet island, and such other property as appertains to said mills. And also all bonds, mortgages, and choses in action, executed to you, and Franklin Steele, and Ard Godfry, for the purchase of real or other property at St. Anthony aforesaid, held by you or in your possession, or under your control; or from collecting any sums due, or to become due, thereon; and also from proceeding at law against said Steele in certain suits commenced by you in the district court for 1st district and county of Ramsey against said Steele, in one of which the said Steele is alone defendant, and in the other of which said Steele and Ard Godfry are defendants, until the order of our said court of chancery to the contrary.

Witness the honorable Jerome Fuller, judge of district court for the first district and county of Ramsey, at St. Paul, this twenty-fifth day of May, in the year 1852.

[Seal of the district court of the county of Ramsey.]

JAMES K. HUMPHREY, *Clerk.*

Copy of Subpœna in Chancery.

TERRITORY OF MINNESOTA,
Ramsey County, ss:

The District Court in and for the county of Ramsey, in the territory aforesaid, to Arnold W. Taylor, greeting:

We command you, in the name of the United States, that you personally appear before the judge of the district court for the first judicial district of the Territory of Minnesota, in chancery sitting, on the first Monday in July, A. D. 1852, wheresoever the said court shall then be, to answer to a bill of complaint exhibited against you in our said

court by Franklin Steele; and to do further, and receive what our said court shall have considered in that behalf; and this you are not to omit under the penalty of the law thence ensuing.

This process is directed to the sheriff of Ramsey county, who is hereby commanded to serve the same on the said Arnold W. Taylor, according to law, if to be found in this county, and due return hereof make.

Witness the honorable Jerome Fuller, chief justice of the supreme court of the Territory of Minnesota, and judge of the [L. S.] district court for the first judicial district, and county of Ramsey, at St. Paul, this 25th day of May, A. D. 1852.

JAMES K. HUMPHREY,
Clerk of said District Court.

Copy of Order to Answer.

DISTRICT COURT,
In Chancery, 1st district, Ramsey county.

FRANKLIN STEELE
vs.
ARNOLD W. TAYLOR.

The subpœna issued in this suit has been returned by the sheriff as personally served on the defendant. Now, on motion of the solicitors for the complaint , it is ordered that the defendant plead, answer, or demur to the bill of complaint—a copy of which is served upon him—within thirty days from the service hereof, or the complainant will take an order that the bill be taken as confessed against the defendant.

RICE, HOLLINSHEAD & BECKER, and
AMES & NELSON,
Complainant's Solicitors.

Dated St. Paul, June 18th, 1852.

DISTRICT COURT,
First Judicial District, county of Ramsey—In Chancery.

FRANKLIN STEELE
against
ARNOLD W. TAYLOR.

To James K. Humphrey, esquire, Clerk of said court:

SIR: You will please enter our appearance for the defendant in the above entitled cause.

July 5th, 1852.

D. A. SECOMBE & WILKIN, and
VAN ETTEN.

Copy of Defendant's Answer.

IN CHANCERY,
First Judicial District, Ramsey county.

FRANKLIN STEELE
against
ARNOLD W. TAYLOR.

The answer of Arnold W. Taylor, the defendant, to the bill of complaint of Franklin Steele, complainant.

This defendant, now and at all times hereafter, saving and reserving to himself all and all manner of benefit and advantage of exception to the manifold errors, uncertainties, imperfections and insufficiencies in the said complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as he, this defendant, is advised is material for him, this defendant, to make answer unto, he, this defendant, answering, saith: That he admits that he, this defendant, Franklin Steele, the said complainant, and Ard Godfry, in the said complainant's said bill of complaint mentioned, were, at and about the time in the said complainant's bill for that purpose mentioned, seized as tenants in common, in the respective proportions in said complainant's bill for that purpose mentioned, of the town of St. Anthony Falls, as described in the said complainant's said bill of complaint; also, of the entire water privileges belonging to the aforementioned premises, and the dam erected upon said premises as described in said complaint, and the appurtenances thereto belonging; also the entire water-front and water privileges upon the east side of the middle island called Nicollet Island, and so much of the lower end of said island as may be necessary to secure said entire water privileges. But this defendant denies that he, this defendant, the said complainant, and Ard Godfry aforesaid, were, at or about the time last mentioned, seized as tenants in common of the pieces or parcels of land in the said complainant's said bill of complaint described, as follows, to wit: The upper island called Boom or Bottineau's Island, and the lower island called Hennepin Island. But this defendant says, that at the time last mentioned, he, this defendant, held a warrantee deed of one undivided half part of said Boom or Bottineau's Island, and said Hennepin Island, made by Franklin Steele, the said complainant, and Annie Steele, his wife, to him, this defendant; and this defendant further says, that he has been informed and believes, that at the time last mentioned, the title to the said islands was, and now is, in controversy.

And this defendant further answering saith, that he admits, that at or about the several times in the said complainant's said bill of complaint for that purpose mentioned, he, this defendant, did commence the two several suits in said complainant's bill for that purpose referred to.

And this defendant further answering saith, that he admits that he, this defendant, did enter into an agreement or bond to Franklin Steele, the said complainant, for the sale of his interest in the property afore-

mentioned, which said agreement or bond being reduced to writing, he, this defendant, did duly execute, of such date, purport and effect, as in the said complainant's said bill of complaint is for that purpose particularly set forth and exhibited, which said agreement was duly acknowledged and recorded, as in the said complainant's said bill of complaint is for that purpose alleged.

And this defendant further answering saith, that he admits that the said complainant did, at the time in the said complainant's said bill of complaint for that purpose mentioned, pay over to him, this defendant, the sum of one thousand dollars.

And this defendant further answering saith, that in the case the twenty-four thousand dollars, by the conditions of said agreement or bond to be paid within sixty days from the date thereof, at the Merchants' or Suffolk Bank in Boston, in the State of Massachusetts, was not paid at the end of the said sixty days, then the said one thousand dollars, to be paid on the ensealing and delivery of said agreement or bond, was to be forfeited to the said Taylor, this defendant.

And this defendant further says, that the said twenty-four thousand dollars was not paid at the said Merchants' or Suffolk Bank in Boston aforesaid, within the said sixty days, and has not been so paid.

And this defendant further says, that by reason of the non-fulfilment by the said complainant of the said condition contained in the said agreement or bond, the said sum of one thousand dollars was forfeited to him, this defendant.

And this defendant further answering saith, that he has been informed, and believes the same to be true, that the said complainant, on the 17th day of March, A. D. 1852, did, by his agents, J. W. Clark & Co., of the city of Boston aforesaid, call upon the officers of the Suffolk Bank of said city, and requested them to give to him, the said complainant, credit to the amount of twenty-four thousand dollars, and to issue to him, the said complainant, a certificate of deposit therefor; and that the officers of said Suffolk Bank did refuse to give to the said complainant credit for the said sum of twenty-four thousand dollars, and to issue to him a certificate of deposit for that amount.

And this defendant further answering saith, that he has been informed, and believes the same to be true, that the said complainant, on the said 17th day of March, A. D. 1852, by his agents, as aforesaid, did call on the officers of the Merchants' Bank of the said city of Boston, and requested them to give to him, the said complainant, credit to the amount of twenty-four thousand dollars, and to issue to him, the said complainant, a certificate of deposit therefor; and that the officers of said bank, last named, did refuse to give to the said complainant credit for the amount of the said sum of twenty-four thousand dollars, and to issue to him a certificate of deposit for that amount.

And this defendant further answering saith, that he has been informed, and verily believes the same to be true, that the said complainant did not, by his agents as aforesaid, or by any other person or

otherwise, tender to the Merchants' or the Suffolk Bank of the said city of Boston the sum of twenty-four thousand dollars, on the 17th day of March, A. D. 1852, as he was in equity bound to do.

And, therefore, this defendant further answering saith, that he denies that the said complainant, on the 17th day of March, A. D. 1852, did tender by his agents, J. W. Clark & Co., of the city of Boston, in the State of Massachusetts, to the Suffolk Bank of said city, the sum of twenty-four thousand dollars, and requested the officers of said bank to receive said money and give him a certificate of deposit therefor, but the officers of said bank refused to receive said money and give a certificate of deposit therefor, alleging that they were not in the habit of issuing certificates of deposit, as it was contrary to the rules and regulations of said bank, and that, therefore, they must decline the request.

And this defendant further answering saith, that he denies that the said complainant did on the same day above mentioned, and after the refusal of the said Suffolk Bank to receive said twenty-four thousand dollars and give a certificate of deposit therefor, by his agents, J. W. Clark & Co., as aforesaid, tender to the Merchants' Bank of the city of Boston aforesaid, the sum of twenty-four thousand dollars, as required by the conditions of said agreement or bond, and requested the officers of said bank to receive said sum of money and give a certificate of deposit therefor; but the officers of said bank refused to receive said money as requested, alleging that they were not in the habit of issuing certificates of deposit, as it was contrary to the rules and regulations of said bank, and that, therefore, they must decline the request.

And this defendant further answering saith, that he admits that the said complainant, on the 17th day of March, A. D. 1852, did receive from the Bank of Commerce, of said city of Boston, a certificate of deposit, of such date, purport and effect as in the complainant's said bill of complaint is for that purpose particularly set forth and exhibited.

And this defendant further answering saith, that he admits that Franklin Steele, the said complainant, on or about the 5th day of May, A. D. 1852, at the town of St. Anthony Falls, did tender to him, this defendant, the certificate last mentioned, and demanded of him, this defendant, a good and sufficient deed of the above described premises, according to the terms of said agreement or bond, and that he, this defendant, refused to receive the said certificate and to give the said deed; but this defendant denies, that he, the said complainant, at the time last mentioned, demanded a specific performance of the obligations entered into by this defendant, and also a full performance of the stipulations in said agreement or bond mentioned to be done and performed by him, this defendant, and that he, this defendant, refused to perform the same.

And this defendant further answering saith, that he admits that the said complainant, on the 20th day of May, A. D. 1852, tendered to him, this defendant, the sum of twenty-four thousand two hundred and forty dollars, lawful money of the United States, and again demanded a good and sufficient deed of the premises above described, according

to the terms of said agreement or bond, and that he, this defendant, refused to receive the said sum of money and to give the said deed; but this defendant denies, that the said complainant at the time last mentioned demanded of this defendant a specific performance of the obligations entered into by this defendant in said agreement or bond, and that he, this defendant, refused to perform the same.

And this defendant further answering saith, that he admits that he, this defendant, held, previous to the 8th day of November, A. D. 1851, and now holds, certain choses in action, executed by various persons to Franklin Steele, the said complainant, Ard Godfry aforesaid, and this defendant, for the purchase-money of village lots in the town of St. Anthony Falls, and other property owned and sold by said Franklin Steele, Ard Godfrey aforesaid, and this defendant; a full, true and particular account of which said choses in action, according to the best knowledge, remembrance, information and belief of this defendant, is contained in the schedule of this answer for that purpose annexed, which said schedule this defendant prays may be taken as part of his said answer.

And this defendant further answering saith, that he denies that the said complainant applied to him, this defendant, between the 20th day of May aforesaid and the time of filing his said bill of complaint, for an assignment of said choses in action, according to the terms of said agreement or writing obligatory.

And this defendant further answering saith, that at the time he entered into the agreement or bond, in the said complainant's said bill of complaint mentioned, with the said complainant, he did so for the purpose of enabling this defendant to obtain means to embark in other business, fully relying on the good faith of said complainant, as well as his ability fully to perform the conditions of the said agreement or bond stipulated to be performed on the part of the said complainant.

And this defendant further answering saith, that on or about the 20th day of January, A. D. 1852, the said complainant left this Territory for the purpose, as he informed this defendant, of proceeding to the city of Boston, aforesaid, to make the deposite of twenty-four thousand dollars in the Merchants' or Suffolk Bank, in said city, according to the conditions of the said agreement or bond in the said complainant's said bill of complaint mentioned.

And this defendant further says, that he heard nothing from the said complainant until about the middle of April, A. D. 1852, when he received a letter from the said complainant, informing this defendant that he, the said complainant, had deposited the sum of twenty-four thousand dollars, as stipulated in the said agreement or bond in the said complainant's said bill of complaint mentioned, of which letter the following is a copy, viz:

WASHINGTON, D. C., *March 20th*, 1852.

DEAR SIR: I have deposited in Boston the 24,000 dollars, as stipulated in the bond, and I shall leave this for the west as soon as I can

learn of the opening of the navigation. Owing to sickness, I did not succeed in raising the money until within a few days of the expiration of the time.

Yours, respectfully,
FRANKLIN STEELE.

ARNOLD W. TAYLOR, Esq.,
Falls St. Anthony, Min. Ty.

And this defendant further says, that at the time the said letter was written by the said complainant to this defendant, the said complainant well knew that he had not deposited the sum of twenty-four thousand dollars in the Merchants' or Suffolk Bank, in the city of Boston aforesaid, as he was bound to do in order to comply with the stipulations contained in the said bond; but the said complainant, intending to misrepresent the real facts of the case, and for the purpose of misleading this defendant in relation thereto, wrote the said letter to this defendant, well knowing the same to be untrue. And this defendant further says, that, relying upon the truth and correctness of the said letter from the said complainant, he, this defendant, made all his business arrangements accordingly, having entered into contract with various persons, and incurred various liabilities, with the expectation of embarking in another business, and with the full expectation of receiving a certificate of deposite of the said twenty-four thousand dollars, as stipulated in the said bond. And this defendant further says, that by his so entering into various contracts with divers persons, and the subsequent inability of this defendant to perform the same by reason of the neglect of the said complainant to fulfil the covenants contained in the said agreement or bond, this defendant has wholly lost the inducement upon which he entered into said agreement or bond, and has suffered great pecuniary losses by so failing to accomplish the object which this defendant had in view when he entered into said agreement or bond.

And this defendant further answering saith, that previous to the 17th day of January, A. D. 1852, and before he made and entered into the said agreement or bond in the said complainant's said bill of complaint mentioned, he, this defendant, had made certain contracts with different persons, by reason whereof he, this defendant, became liable to pay to different persons large amounts of money—a particular description of which said contracts is contained and mentioned in the said bond or agreement, and in the schedule thereto annexed.

And this defendant further says, that he was to a large expense in the carrying out of said contracts, and in the erection of the said store mentioned in the said agreement or bond, and had paid out a large sum of money thereon. And although the said complainant, by the conditions of the said agreement or bond, covenanted to assume the said contracts in the said agreement or bond mentioned, and to pay for the store erected by this defendant, and to refund to said Taylor, this defendant, all moneys advanced by said Taylor on the said contracts, and to pay to Robert Bunton his wages and expenses, as set forth in

said agreement or bond; yet the said complainant has not assumed the said contracts, and paid for the said store, and refunded said moneys, and paid to Robert Bunton his wages and expenses; nor has the said complainant performed any part thereof, as he was in duty bound to do.

And this defendant further answering saith, that by the conditions of said agreement or bond in the said complainant's said bill of complaint mentioned, he, this defendant, was to continue in the possession and use of his mills until the conditions of the said agreement or bond were fulfilled; yet the said complainant, well knowing that the conditions of the said agreement or bond, so far as related to the performance on the part of the said complainant, had not been fulfilled, on or about the 21st day of May, A. D. 1852, forcibly entered into and dispossessed this defendant of his mills in the town of St. Anthony Falls, which were mentioned in the said agreement or bond, and were a part of the real property conditioned to be conveyed in the said bond mentioned in the said complainant's said bill of complaint.

And this defendant charges, that the said complainant knowingly and wilfully committed a breach of the said conditions contained in the said bond, by so taking, entering into, and forcibly dispossessing this defendant from the premises aforesaid.

And this defendant further answering saith, that he has been greatly damaged and injured by reason of the refusal or neglect of the said complainant to comply with and keep the conditions of the said agreement or bond in the said complainant's said bill of complaint mentioned.

And this defendant further says, that he has been greatly damaged in consequence of his being forcibly dispossessed of the said mills as aforesaid by the said complainant.

And this defendant further answering saith, that the said complainant has been guilty of gross laches in not performing the conditions mentioned in the said bond to be performed by the said complainant, in that he, the said complainant, neglected for an unreasonable time to ascertain from the officers of the Merchants' and Suffolk Bank, in the said agreement or bond mentioned, whether the said officers would receive from him, the said complainant, the twenty-four thousand dollars mentioned in said bond, and to give to him, the said complainant, a certificate of deposit therefor; and also that the said complainant neglected to tender to the said bank the sum of twenty-four thousand dollars, and request the officers of said banks to give to him, the said complainant, a certificate of deposit therefor, according to the conditions of said bond, though the said complainant had full and ample time to make the said tender, as he was required to do; and also that the said complainant did not make a tender to him, this defendant, in a reasonable time, in consequence of which delay this defendant suffered great damage and injury.

And this defendant further answering saith, that the said complainant has not performed the conditions of said agreement or bond in the

said complainant's said bill of complaint mentioned, as in equity and good conscience he was bound to perform them.

And this defendant further answering saith, that he denies all and all manner of unlawful combination and confederacy wherewith he is by the said complainant's said bill of complaint charged, without this, that there is any other matter, cause, or thing in the said complainant's said bill of complaint contained material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, traversed, and avoided or denied, is true to the knowledge or belief of this defendant.

All which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct; and prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

D. A. SECOMBE,
WILKIN and VAN ETTEN, and
BABCOCK and WILKERSON,
Solicitors for Defendant and of Counsel.

TERRITORY OF MINNESOTA,
Ramsey county, ss:

Personally appeared before me, Arnold W. Taylor, the within named defendant, and made oath that he had heard the foregoing answer to the bill of complaint of Franklin Steele, complainant, read, and knew the contents thereof, and that the same is true, of his own knowledge, except as to the matters therein stated to be on his information and belief, and as to those matters, that he believes it to be true.

ARNOLD W. TAYLOR.

Sworn to and subscribed, this 17th day of July, 1852, before me,
W. P. MURRAY,
Notary Public in and for the Territory of Minnesota.

Schedule of Bonds

In the possession of Arnold W. Taylor, this defendant, and referred to in the answer to which this is annexed.

Names of Obligors.	When Payable.	Amount.
John H. Stevens,	5 years from date - - -	$600
Elnor Taylor,	Nov. 8, 1854 - - - -	585
Charles T. Stearns,	Nov. 8, 1852 - - - -	275
H. Fletcher,	2½ years from date - - -	175
John Holland,	Dec. 29, 1852 - - - -	75
Eli F. Lewis,	Nov. 8, 1852 - - - -	120
R. P. Russell and J. D. Crittenden,	Dec. 17th, 1854 - - -	75
W. M. Getchell,	May 1st 1852 - - - -	75

Names of Obligors.	When Payable.	Amount.
John H. Stevens,	5 years from date - - -	$375
J. M. & W. R. Marshall,	Nov. 8, 1852 - - - -	110
Ezra Hanscom,	$50 in 1, and $50 in 2 years from date - - - - -	100
Cha's D. Kingsley,	Nov. 8, 1851 - - - -	200
Albert N. Hoyt,	Dec. 17, 1852 - - -	50
Allen Harmon,	Nov. 28, 1851 - - -	50
Charles Mansur,	May 4, 1855 - - - -	175
Edward H. McIntosh,	June 1, 1852 - - - -	100
J. M. & W. R. Marshall,	2 years from date - - -	400
Gorton G. Loomes,	2½ years from date - - -	320
John J. Terwall,	May 23, 1852 - - - -	125
Otis C. Whitney,	1½ years from date - - -	125
Nath'l N. Powell,	Nov. 27, 1852 - - -	250
Josiah P. Harrison,	2 years from date - - -	120
John W. Brown,	Nov. 1, 1852 - - - -	100
Nath'l S. Grover,	Oct. 23, 1852 - - - -	100

TERRITORY OF MINNESOTA,
Ramsey county, ss:

David A. Secombe being duly sworn says, that on the 17th day of July, A. D. 1852, he delivered to M. E. Ames, esquire, one of the solicitors of the complainant within named, personally, a true copy of the within answer of the defendant.

DAVID A. SECOMBE.

Subscribed and sworn, this 24th day of July, 1852, before me,
JAMES K. HUMPHREY,
Clerk Dist. Court.

Copy of Notice of Motion.

FRANKLIN STEELE
against
ARNOLD W. TAYLOR. } In Chancery.

1st Judicial District, Ramsey County.

TO RICE, HOLLINSHEAD, and BECKER, and AMES and NELSON:

Take notice that a motion will be made before the honorable Jerome Fuller, judge of the first judicial district, on the 26th day of July instant, at 10 o'clock a. m. of that day, or as soon thereafter as counsel can be heard, for an order that injuction in this cause be dissolved with costs, and for the appointment of a receiver, and for such further and for such other order and relief as the court may think proper to grant.

Yours, &c., &c.,
D. A. SECOMBE, WILKIN & VAN ETTEN, and
BABCOCK & WILKERSON,
Solicitors for Defendant and of Counsel.

Dated July 17th, 1852.

Copy of Decision of Motion to dissolve Injunction.

AT CHAMBERS, *July* 28, 1852.

DISTRICT COURT, *Ramsey county.*

FRANKLIN STEELE
vs. } In Chancery.
ARNOLD W. TAYLOR.

Motion to dissolve Injunction on bill and Answer.

Decision.

The bill prays for a specific performance of a contract on the part of the defendant, to sell and convey to the plaintiff certain *certain* real estate at St. Anthony Falls. The plaintiff comes into this court on two grounds: First, for a more complete remedy than he could have at law; and, secondly, to be relieved from the legal consequences of a failure to perform the contract strictly on his part; both are well known grounds of equity jurisdiction.

The fact, however, that the plaintiff founds his title to relief, in a measure, upon statements to the effect that the defendant is seeking to take an unconscientious advantage of the plaintiff's inability to perform the contract in all respects according to its terms, distinguishes this case from one where the aid of the court is invoked merely on the ground of affording a more complete remedy than a court of law.

The remedy at law is gone, and unless the plaintiff can be relieved in chancery, he is without redress.

The defendant insists he is not relievable here, for want of mutuality in the contract of sale.

That is a question more proper for the final hearing, than for a motion; it was not argued, and is accordingly reserved.

The defendant also insists that the plaintiff has not performed the contract on his part.

The payment of the twenty-four thousand dollars by Steele, and the conveyance by Taylor, thereupon, were to precede the performance of other stipulations in the contract. The refusal of Taylor to execute the conveyances would excuse Steele from the performance of the the other stipulations on his part, until Taylor should perform that part of the agreement on his side.

But the defendant claims that the plaintiff has not paid the twenty-four thousand dollars, as he was bound to.

The payment was to be made by depositing the amount in one of the two banks specified in the city of Boston, within sixty days after the date of the contract, and afterwards furnishing a certificate of deposit to Taylor at St. Anthony Falls.

It is not pretended that Steele did not deposit the amount within the time, but that he did not deposite it in either of the banks specified.

The bill alleges that the amount was tendered to each of the two banks, and that they declined to receive it and give a certificate of

deposit therefor. The answer upon information and belief denies that the money was actually tendered to the banks, and sets up that the plaintiff applied to them for credit to that amount, which they severally declined to give; this last statement is not necessarily inconsistent with those of the bill; for it may well have happened that the plaintiff applied for credit, and when he found that was not to be had, tendered, or offered the money.

The denial of the tender, therefore, is all that is material in that part of the answer.

To entitle the defendant to a *a* dissolution of the injunction, the denial should have been positive.

The allegations of the bill are positive, and the court will not presume they were made merely on information and belief derived from others, though there is reason to suspect they were.

The plaintiff may have been cognizant of it, notwithstanding the tender was made by others.

Again, it is not necessary there should have been a legal tender to sustain the allegations of the bill in this cause. Neither the *the* Suffolk Bank or the Merchants' Bank was constituted agent for the defendant to receive payment for him. Nor was the plaintiff to pay the defendant at either of those banks, but to deposit the money in one of them, and turn over the certificate of deposit to the defendant.

The plaintiff alleges as an excuse for not doing so, that the banks declined to receive the money and give a certificate. Whether they refused upon an application made with the money in hand, or upon an offer to bring it in, was immaterial.

It was enough, if they refused upon an application to them to know if they would receive the money and enter into a contract to refund it. This being so, a denial of a tender to the banks, in the strict legal sense of the term, is not a denial of the equity set up by the plaintiff.

The alleged refusal of the banks to receive the money when offered, whether in hand or otherwise, is the material point which the defendant is called upon to meet, and that is not sufficiently denied.

It is not always, nor often sufficient to repeat the language of the bill verbatim in a traverse; and a large part of the defendants' traverse of the allegations in question is a negative pregnant. 1 Barb. Ch. Pr. 136.

Upon the refusal of the banks specified in the contract to receive the money, I think the defendant was right in depositing it in some other bank in Boston.

The contract in subject required the deposit of twenty-four thousand dollars, so that the money would be secure and available in that locality. When the Suffolk Bank and Merchants' Bank declined to take the money on deposit, had the plaintiff come with it to the defendant at St. Anthony, the latter might well have said to him, I wanted this money *this money* in Boston, not here, and you must take it back there for me. If those banks would not take it, you should have put it in some other.

The refusal of the defendant to receive a certificate of deposit in

another bank which is not pretended was not equally as safe and good as either of those specified, and to fulfil his contract on his part, because the money was not deposited in one of those banks, when they declined to receive it, was inequitable.

The money was not to be placed to the defendant's credit in either of the banks specified, and the only conceivable reason for naming them, rather than others, is, that they were known to be responsible and safe, and secure places of deposit.

There is no doubt that, at the time the contract was made, the defendant would have consented to the substitution of any other safe bank in Boston, when it might be more convenient for the plaintiff to deposit the money.

What he wanted was that amount deposited in a safe bank in that city, and an available certificate of deposit furnished him at St. Anthony Falls.

The money was so deposited and the certificate furnished, for the purpose of realizing the money, and enabling the defendant to enter into business, or fulfil any contracts he had entered into; for ought that appears, or is pretended, the certificate of the Bank of Commerce was just as good and available as the certificate of the Suffolk or Merchants' Bank would have been.

By tendering it to the defendant, the plaintiff, though not literally, yet in substance, complied with his contract to pay the twenty-four thousand dollars; he would not comply strictly, if the bill be true, but he did that which was equally beneficial to the plaintiff; he deposited the amount, not in the bank named, but in the locality prescribed, and in another bank equally good.

To sanction the refusal of the defendant to fulfil the contract on his part, because it was not fulfilled to the letter, on the part of the plaintiff, under the circumstances, would be to gratify his whim and caprice, rather than to protect his substantial rights.

When advantage is taken of a circumstance that does not admit of a strict performance in the contract; if the failure is not in a matter of substance, courts of equity will relieve. 2 Story's Eq., par. 747.

Where the terms of an agreement have not been strictly complied with, or are incapable of being strictly complied with, still, if there has not been gross negligence in the party, and it is conscientious that the agreement should be performed, and, if compensation may be made for any injury occasioned by the non-compliance with the strict terms, in all such cases courts of equity will interfere and decree a specific performance. Id., par. 775. They dispense with that which would make a compliance with what the law requires oppressive, and are in the constant habit of relieving a party who has acted fairly, although negligently. Id., par. 748. The plaintiff was to deposit the money within sixty days, and afterwards furnish a certificate of deposit to the defendant at St. Anthony Falls.

This must be construed to mean within a reasonable time afterwards. The money was deposited on the 17th of March. The tender of the

certificate was made on the 5th of May. Considering the distance between the place of deposit and the place of tender, the season of the year, the means of conveyance, the state of the roads, and the period of the opening of navigation on the Upper Mississippi; I do not think the time was unreasonable. It appears from the plaintiff's letter, set out in the answer, that he was prevented by sickness in his family from making the deposit at an earlier day; and that he would start for this territory as soon as he could learn of the opening of navigation, and the time of his arrival indicates that he did; when the defendant rejected the certificate offered him, plaintiff did not rest there, as perhaps he might have done with safety, but, on the 21st of May, he tendered to the defendant, at St. Anthony Falls, the twenty-four thousand dollars in money; and also the difference in exchange between that place and Boston, and now brings the money into court.

The plaintiff, certainly, has not lain by without any effort to comply with the contract on his part. He has done what he could to compensate the defendant for a non-compliance with its strict terms.

If the defendant would not have the certificate, he ought to have taken the specie.

Had not the certificate been first offered, perhaps the specie should have been tendered earlier, but it was tendered within a reasonable time after the rejection of the certificate.

The plaintiff ought to have notified the defendant of the refusal of the specified banks to take the money, and of its deposit in another, at an earlier day, and asked for instructions. But his omission to do so is not such a gross negligence or omission of duty as deprives him of his equity. It does not appear that the defendant was in any way prejudiced thereby; still, fair, open dealing required it to be done.

The defendant asks for a dissolution of the injunction, upon the further ground that the plaintiff has wilfully violated the contract of which he seeks a specific performance. This is not a denial of the matter of the bill, but new matter set up by the answer in avoidance of the case made by the bill.

The plaintiff has not had any opportunity to controvert it. (Simpson vs. Hart, 14 J. R. 63.)

The dissolution of an injunction is always a matter resting in the sound discretion of the court. I think the exercise of that discretion in this case requires the retention of the injunction till the final hearing. It does not appear that the defendant will be particularly prejudiced by such a course, and he has his remedy in damages for any injury he may have sustained by it, if it is finally dissolved. (1 Barb., Ch. P. 640.)

It is irregular to apply for the appointment of a receiver on the answer. The proper course is to apply by petition, showing a case calling for the appointment to protect the rights of the defendant, pendente lite.

The motion of the defendant is denied, with ten dollars costs of opposing.

Order accordingly. J. FULLER.

Copy of Judge's Notes.

STEELE
vs.
TAYLOR.

The injunction in this case should be dissolved—

1st. Because the equity of the bill is fully answered by the defendant.

The complainant did not comply with the conditions of the bond, and the defendant was not bound to receive the money. The defendant in this case was the only party bound; the surety here is not mutual; one party only is bound by the agreement. In such e case, a bill for a specific performance will not be sustained. (1st J. Chan. Rep., page 369.)

The complainant did not deposit the money in time. Time, in this case, is of the essence of the contract. (Ibid.)

Courts of equity will not decree a specific performance, which the consideration is incapable of being performed. (2 Story Equity Juris. 65.)

No hardships will arise to the plaintiff from not interfering in this suit, for no decision is made which affects the right of the plaintiff to recover at law upon the bond. (Ibid.)

The court will not decree a specific contract, where he who seeks it is not in a condition to perform his own part of the contract. The payment of the money is not a full compensation to the defendant. (Story's Equity, 101 and '2.

Copy of Petition.

MINNESOTA TERRITORY,
District Court, 1st district, county of Ramsey—In Chancery.

In the matter of

FRANKLIN STEELE
against
ARNOLD W. TAYLOR.

GENT.: Please take notice, that on the 14th day of March inst., at 10 o'clock a. m., the petition of which the annexed is a copy will be presented to the Hon. Henry Z. Hayner, at his chambers in St. Paul, in said county, and a motion made thereon that the court permit the petitioners, W. L. Larned, John Rollins, James B. Gilbert, Benjamin Parker, Roswell P. Russell, Caleb D. Dorr, James McCann, E. F. King, John W. North, Sumner W. Farnham, Charles F. Stimpson, Charles Brown, Eli C. Jones, William H. Coles, Orrin W. Rice, John Jack-

ins, and J. M. Durnam, to be joined as defendants in the above entitled cause.

J. W. NORTH,
Solicitor for Petitioners and of Counsel, and Solicitor in person.

Dated March 4th, 1853.

To RICE, HOLLINSHEAD & BECKER, and AMES & NELSON, Solicitors for Complainant; and DAVID A. SECOMBE, WILKIN & VAN ETTEN, and BABCOCK & WILKERSON, Defendant's Solicitors.

Due service of the above notice and annexed petition is hereby admitted.

March 4th, 1853.

DAVID A. SECOMBE,
Solicitor for Defendant.

Due service of the above notice and annexed petition is hereby admitted.

March 4th, 1853.

RICE, HOLLINSHEAD & BECKER,
Sol'rs for Compl'ts.

In Chancery, First Judicial District, Ramsey county.

In the matter of

FRANKLIN STEELE
against
ARNOLD W. TAYLOR.

To the honorable Henry Z. Hayner, Chief Justice, &c.:

The petition of William L. Larned, John Rollins, James B. Gilbert, Benjamin Parker, Roswell P. Russell, Caleb D. Dorr, James McCann, E. F. King, John W. North, Sumner W. Farnham, Charles Brown, Eli C. Jones, William H. Cole, Orrin W. Rice, John Jackins, and J. M. Durnam, respectfully showeth unto your honor, that since the filing and service of the complaint in this cause, to wit, on the 30th day of December last, by virtue of a writ of execution issued out of and under the seal of the district court, in and for the said county of Ramsey, upon a judgment rendered in said court on or about the 5th day of November, A. D. 1852, in favor of your petitioner, John W. North, and against the defendant, Arnold W. Taylor, for the sum of five hundred and thirty-five dollars, and costs of suit, the sheriff of said county exposed for sale, and your petitioners being the highest bidders therefor, severally purchased the interest of the above named defendant (being the undivided half) in the following described property mentioned in the complaint first above referred to, and situated in the town of St. Anthony Falls, and county aforesaid, according to a map of said town, made by W. R. Marshall, to wit:

Your petitioner, William L. Larned, purchased at said sale the defendant Taylor's interest, being the undivided half, in lots numbered 1, 2, and 4, in block numbered 42; lots 1, 2, 9, and 10, in block 66; lots 5, 6, 7, and 8, in block 67.

Your petitioner, John Rollins, purchased at said sale defendant Taylor's interest, being the undivided half, in lots 1, 3, and 4, in block 46; lots 1, 2, and 3, in block 47; lot 10, in block 48; lots 1 and 4, in block 15; lot 5, in block 2; lot 5, in block 4; lot 6, in block 66; lot 12, in block 67; lots 5 and 10, in block 70; lots 8 and 9, in block 39; lot 3, in block 68.

Your petitioner, James B. Gilbert, purchased at said sale the defendant Taylor's interest, being the undivided half, in lot 5, in block 46; lots 4, 5, 6, and 7, in block 72; lot 4, in block 68; lots 2 and 3, in block 69; lots 3 and 4, in block 70; lots 3, 4, 5, 6, and 7, in block 41.

Your petitioner, Benjamin Parker, purchased at said sale the defendant Taylor's interest, being the undivided half, in lots 7, 8, and 11, in block 7; lots 1 and 8, in block 8; lots 5 and 8, in block 66; lot 11, in block 67; lot 7, in block 68.

Your petitioner, Roswell P. Russell, purchased at said sale the defendant Taylor's interest, being the undivided half, in lots 4 and 6, in block 47; lot 10, in block 1; lots 1, 2, 3, 4, 6, 7, 8, 9, and 10, in block 2; lots 7 and 8, in block 6; lot 3, in block 42.

Your petitioner, Caleb D. Dorr, purchased at said sale defendant Taylor's interest, being the undivided half, in lots 1, 2, 3, 4, and 5, in block 48.

Your petitioner, James McCann, purchased at said sale defendant Taylor's interest, being the undivided half, in lots 5, 6, 7, 8, and 9, in block 1; lots 1, 2, and 9, in block 3; lot 9, in block 4; lots 9 and 10, in block 7.

Your petitioner, E. F. King, purchased at said sale defendant Taylor's interest, being the undivided half, in lot 3, in block 1; lots 5, 6, 8, and 10, in block 3; lots 1, 3, 4, and 6, in block 4.

Your petitioner, John W. North, purchased at said sale defendant Taylor's interest, being the undivided half, in lot 7, in block 48; lots 1, 2, 3, 6, 7, 8, 9, and 10, in block 13; lots 1 and 3, in block 14; lots 1, 2, and 3, in block 15; a fraction adjoining lot 3, in block 14; fraction adjoining lot 2, in block 15; fraction adjoining lot 3, in block 15; lots 1 and 2, in block 1; lot 7, in block 3; lots 2, 7, and 8, in block 4; lot 3, in block 7.

And your petitioner, John W. North, further represents, that he is the present owner and assignee of the interest of said defendant Taylor in the whole block 18; that said interest, being the undivided half, was sold on an execution in favor of W. R. Marshall, and against said Taylor, in the early part of October last, at which sale J. H. Trader became the purchaser of said interest in lots 1, 2, 3, 4, and 5, in said block, and said Marshall became the purchaser of said interest in lots

6, 7, 8, 9, 10, 11, and 12, in said block; that the time for redemption having expired, each of said purchasers received from the sheriff who sold the same a deed of the property purchased by him as above named; that subsequently the said Taylor conveyed by deed duly executed his said interest so purchased to Orrin W. Rice, who afterwards conveyed the same to your petitioner by deed duly executed; that said Marshall also conveyed the interest purchased by him, as above related, to your petitioner by deed duly executed.

Your petitioner further represents to your honor, that at the said sheriff's sale, on the 30th of December last, William D. Garland being the highest bidder therefor, became the purchaser of defendant's interest, being the undivided half in lots No. 4 and 5, in block No. 13; and lots 11 and 12, in block No. 39; that the time for redemption having expired, and he having received a sheriff's deed therefor, for a valuable consideration conveyed the same to your petitioner.

And your petitioner further represents, that having received a sheriff's deed therefor, he, for a valuable consideration, has conveyed to Eli C. Jones his interest in lots No. 2, 7, and 8, in block 4, in said town; and that he has for like consideration conveyed his interest in lots 1 and 2, in block 1; lot 7, in block 3; and lot 3, in block 15, to Orrin W. Rice, of St. Anthony.

Whereby your petitioner has become, and is at the present time seized in fee and possessed of the interest of the defendant in (being the undivided half of) block No. 13, block 18, and lots 1 and 2, in block 14; lot 2, in block 15; with a fraction adjoining lot 2, in block 15; and a fraction adjoining lot 3, in block 14; also lot 7, in block 48; and lots 11 and 12, in block No. 39.

Your petitioner, Charles F. Stimson, purchased at said sale, on the 30th day of December last, defendant's interest, being the undivided half, in lot No. 4, in block No. 6; and lots No. 4 and 5, in block No. 7.

And your petitioner, Sumner W. Farnham, and Charles F. Stimson, known by the style and firm of Farnham & Stimson, respectfully represent to your honor, that on the 31st day of December last, by virtue of a writ of execution, issued out of, and under the seal of the district court in and for the county of Ramsey, upon a judgment rendered in said court at the last November term, in favor of your petitioners and against the said defendant, the sheriff of said county exposed for sale, and your petitioners being the highest bidders therefor, purchased the interest of the said defendant, being the undivided half, in sawmills known as Nos. five (5) and six (6), near the Falls of St. Anthony, in said town; also lots 4, 5, 9, and 10, in block No. 61; lots 7, 8, and 9, in block 64; lots 3, 7, 8, and 9, in block 73; and lot No. 1, in block No. 74, in said town.

Your petitioner, Charles F. Stimson, purchased at said sale, December 31st, 1852, defendant's interest, being the undivided half of lots 1, 2, 3, 4, 5, 6, 9, and 10, in block No. 62.

Your petitioner, William L. Larned, purchased at said sale defen-

dant's interest in lots No. 3 and 6, in block No. 60; lots 1 and 2, 6 and 7, in block No. 61; and lots 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10, in block 65.

Your petitioner, Charles Brown, purchased at said sheriff's sale, on the 30th day of December, defendant's interest in lots 1, 2, 3, 4, 5, 6, 7, 8, 0, and 10, in block No. 5.

Your petitioner, Eli C. Jones, represents to your honor, that he has purchased of your petitioner, John W. North, the defendant's interest in lots 2, 7, and 8, in block No. 4, being, as your petitioner is informed and believes, the same purchased by said North at the sheriff's sale first mentioned, he having first received a sheriff's deed therefor.

Your petitioner, William H. Cole, purchased at said sheriff's sale, on the 31st day of December last, defendant's interest in lots No. 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10, in block No. 63.

Your petitioner, Orrin W. Rice, on the second day of March instant, for a valuable consideration, purchased of said John W. North lots No. 1 and 2, in block No. 1; lot 7, in block 3; lot 3, in block No. 15; and lot 3, in block No. 7 in said town.

Your petitioner, John Jackins, purchased at said sheriff's sale, on the 30th day of December last, defendant's interest in lots 2 and 4, in block No. 14, and a fraction adjoining lot 2, in said block.

Your petitioner, J. M. Durnam, purchased at said sale on the 30th day of December last, defendant's interest in lots 1, 2, 3, 8, 9 and 10, in block 72; and on the 5th day of January last, at a sheriff's sale, on execution in favor of Edwin B. Ramsdell, and against the property of said Taylor, your petitioner purchased the interest of said defendant in lots 9 and 10, in block 31 in the said town, and has received a sheriff's certificate therefor.

Your petitioners, Benjamin Parker, John Rollins, Eli C. Jones, John W. North, Sumner W. Farnham, and Charles F. Stimson, further represent unto your honor, that by virtue of an execution issued out of and under the seal of the district court aforesaid, on the 14th day of January last, upon a judgment rendered in said court on the 13th day of January, 1853, in favor of said Benjamin Parker and against said defendant, the said sheriff of the county of Ramsey, on the 3d day of March inst., exposed for sale defendant's interest in the following described property in said town of St. Anthony Falls, of which your petitioners became the purchasers, as follows:

Your petitioner, Benjamin Parker, purchased at said sale defendant's interest in lots 2, 3, 4 and 5, in block 35; lot 1, in block 12; lot 7, 8 and 9, in block 53; lot 8 in block 75, and lot 7 in block 76, in said town, and has received a sheriff's certificate therefor.

Your petitioner, John Rollins, purchased at said sale defendant's interest in lots 1, 2, 3 and 4, in block 52; lot 6 in block 12; lots 1, 4 and 6, in block 53, and lot 6 in block 75, and has received a sheriff's certificate therefor.

Your petitioner, Eli C. Jones, purchased at said sale defendant's interest in lots 18, 19 and 20, in block 39; lot 3 in block 53; lot 3 in

block 75; lot 10 in block 75, and lot 6 in block 76, and has received a sheriff's certificate therefor.

Your petitioner, John W. North, purchased at said sale lots 4, 5, 6, 14, 15 and 16, in block No. 39; and lot 3 in block 12, in said town, and has received a sheriff's certificate therefor.

Your petitioners, Sumner W. Farnham and Charles F. Stimson, purchased at said sale defendant's interest in lot 5 in block 12; and lots 3, 5 and 10, in block 53, in said town, and has received a sheriff's certificate therefor.

Your petitioner, Charles F. Stimson, purchased at said sale defendant's interest in lot 11 and 12, in block 50, in said town, and has received a sheriff's certificate therefor.

Your petitioner, Sumner W. Farnham, purchased at said sale lot No. 10, in block No. 50, in said town, and has received a sheriff's certificate therefor.

And your petitioners, above mentioned, who purchased property at the above mentioned sales, further represent, that the time for the redemption of said property has already expired, and, as your petitioners are informed and believes, sheriff's deeds are now being prepared and executed to each of your petitioners for the several parcels of property so severally purchased by them:

Wherefore, your petitioners pray that they may be jointly and severally admitted as defendants in the above entitled causes, and be permitted to exercise and enjoy all and singular the rights and privileges of said defendant therein, and to which they may be admitted consistently with the rules of this court; and that should this court decree a conveyance of said property to the complainant, as demanded in his complaint, then that your petitioners may be allowed by this court to share with the defendant and with each other all moneys already paid into court, and now under the control of this court, as the purchase-money of said property; and any other moneys now due or to become due from the complainant to the defendant, for the property described in said complaint, in proportion to the share of said property now held, claimed or owned by each of your petitioners, as above stated; or that your petitioners may be permitted, in case of such decree, to retain and hold said property by paying their just proportion of the purchase-money agreed upon by the parties to this suit in the contract of sale mentioned in the complaint in this cause, and for such other and further relief as to your honor may seem just.

J. W. NORTH,
Solicitor for Petitioners, and of
Counsel and Solicitor in person.

Dated March 4, 1853.

TERRITORY OF MINNESOTA,
Ramsey county, ss:

William L. Larned, John Rollins, James B. Gilbert, Benjamin Parker, Roswell P. Russell, Caleb D. Dorr, James McCann, E. F. King, John W. North, Sumner W. Farnham, Charles F. Stimson, Charles

1063

Brown, Eli C. Jones, William H. Cole, Orrin W. Rice, John Jackins, and J. M. Durnam, the above named petitioners, having been duly sworn, each for himself says, that he has heard the above petition read, and knows the contents thereof, and that the matters therein stated as relating to him are true of his own knowledge, except the matters therein stated to be on information and belief, and as to those matters that he believes them to be true.

JAMES B. GILBERT,
BENJAMIN PARKER,
E. F. KING,
C. F. STIMSON,
JOHN ROLLINS,
ELI C. JONES,
JOHN W. NORTH,
JAMES McCANN,
CHARLES BROWN,
W. H. COLE,
ORRIN W. RICE,
JOHN JACKINS,
JOHN M. DURNAM,
SUMNER W. FARNHAM,
CALEB D. DORR,
WILLIAM L. LARNED,
R. P. RUSSELL.

Subscribed and sworn before me, this fourth day of March, A. D. one thousand eight hundred and fifty-three.

GEO. W. PRESCOTT,
Notary Public, Min. Ter.

Copy of Order.

In Chancery, 1st Judicial District, County of Ramsey.

In the matter of

FRANKLIN STEELE
ags't
ARNOLD W. TAYLOR.

ST. PAUL, *March 14th*, 1853.

On reading and filing the petition of Wm. L. Larned, John Rollins, James B. Gilbert, Benjamin Parker, Roswell P. Russell, Caleb D. Dorr, James McCann, E. F. King, John W. North, Sumner W. Farnham, Charles F. Stimson, Charles Brown, Eli C. Jones, William H. Cole, Orrin W. Rice, John Jackins, and J. M. Durnam, with proof of due service of notice of motion to the solicitors of the complainant and of the defendant above named; and on motion of J. W. North, solicitor and of counsel for petitioners, and on hearing D. A. Secombe, M. S. Wilkerson, and J. Van Etten, esqrs., solicitors and of counsel for the defendant, it is ordered, that the prayer of the said

petition be granted, and that the said petitioners be admitted as defendants in the above entitled cause, in accordance with the prayer of said petition, and that said petitioners have forty days in which to file and serve an answer in said cause, should they deem it necessary to do so.

H. Z. HAYNER.

Copy of Petition.

In Chancery, 1st Judicial District, Ramsey County.

In the matter of

FRANKLIN STEELE
against
ARNOLD W. TAYLOR.

GENT.: Please take notice that a petition, of which the annexed is a copy, will be presented to the Hon. Henry Z. Hayner, chief justice, &c., at his chambers, in St. Paul, on the 18th day of March inst., at 10 o'clock a. m., and a motion made thereon, that Samuel Estes, Elijah Moulton, E. Snell, M. P. Wilson, A. B. Fish, Edward Lippincott, William Hanson, Charles T. Stearns, and Herman Jenkins, jr., be admitted and joined as defendants in the above entitled cause, as prayed for in said petition.

J. W. NORTH,
Solicitors for Petitioners and of Counsel.

Dated March 8th, 1853.

To RICE, HOLLINSHEAD, and BECKER, Esqrs., Solicitors for Complainant; and to DAVID A. SECOMBE, Solicitor for Defendant.

Due service of the above notice and annexed petition is hereby admitted.

DAVID A. SECOMBE,
Solicitor for Defendant.

March 10th, 1853.

In Chancery, 1st Judicial District, Ramsey County.

In the matter of

FRANKLIN STEELE
against
ARNOLD W. TAYLOR.

To the honorable Henry Z. Hayner, Chief Justice, &c.:

The petition of Samuel Estes, Elijah Moulton, E. Snell, M. P. Wilson, A. B. Fish, Edward Lippincott, William Hanson, Charles T. Stearns, and Herman Jenkins, jr., respectfully showeth unto your honor, that since the filing and service of the complaint in this cause, to wit, on the 30th day of December, 1852, by virtue of a writ of exe-

cution, issued out of and under the seal of the district court, in and for the county of Ramsey, upon a judgment rendered in said court in the last November term, in favor of John W. North, and against the defendant, Arnold W. Taylor, the sheriff of said county exposed for sale, and your petitioners, being the highest bidders therefor, severally purchased the interest of the said defendant in (and being the undivided of) the following described property mentioned in the complaint of the above named complainant, as your petitioners are informed and believe, and situated in the town of St. Anthony Falls, in the county of Ramsey aforesaid, according to a map and survey of said town made by W. R. Marshall, to wit:

Your petitioner, Samuel Estes, purchased at the said sale defendant's interest in, being the undivided half of, lots No. 8 and 9 in block No. 48; and your petitioners further show unto your honor, that on the 31st day of December last, by virtue of a writ of execution, issued out of and under the seal of the said district court, upon a judgment rendered in said court at the last November term, in favor of Sumner W. Farnham and Charles F. Stimson, and against the said defendant, the said sheriff of St. Anthony, in said county, exposed for sale, and your petitioners, being the highest bidders therefor, severally purchased the defendant's interest in, being the undivided half of, the following described property, to wit:

Your said petitioner, Samuel Estes, purchased at said last mentioned sale defendant's interest in, being the undivided half of, lots 1, 2 and 10, in block 64; lots 4, 5 and 6, in block 73; and your petitioner has also purchased of Z. E. B. Nash, of St. Anthony Falls, the defendant's interest in lot 2, 3, 10, and 13, in block 39, which said Nash purchased at said sheriff's sale first mentioned, and for which the time of redemption having expired, he has received a sheriff's deed, after which he conveyed the same by deed to your petitioner.

Your petitioner, Elijah Moulton, purchased at the said first mentioned sale defendant's interest in lot 8, in block 69, for which he has received a sheriff's deed, the time of redemption having expired.

Your petitioner, E. Snell, purchased at the said first mentioned sale defendant's interest in lot 9, block 67, for which the time for redemption having expired, he has received a sheriff's deed; and that on the 5th day of February last, by virtue of a writ of execution, issued out of and under the seal of the district court, on a judgment in favor of Edwin B. Ramsdell, and against the said defendant, the said sheriff exposed for sale, and your petitioner purchased, the interest of said defendant in lot 8, in block 31, in said town, and received a sheriff's certificate therefor.

Your petitioner, M. P. Wilson, purchased at said first mentioned sale defendant's interest in lots 1, 2, 6 and 12 in block 7; lots 6, 7, 9 and 10, in block 8; lot 4, in block 67; lot 10, in block 67; lots 8 and 9 in block 68; lots 6 and 7, in block 70; and lot 17 in block 39.

Your petitioner, A. B. Fish, purchased at said sale defendant's interest in lots 2 and 3, in block 8; lots 4 and 7, in block 66; lots 2 and 3, in block 67; lot 2 in block 68; lot 7 in block 69, and lots 1, 2 and

8, in block 70, in said town, and the time for redemption having expired, your petitioner has received a sheriff's deed therefor.

Your petitioner, Edward Lippincott, purchased at the said sale first mentioned, defendant's interest in lot 5, in block 47, in said town, and the time for redemption having expired, he has received a sheriff's deed therefor.

Your petitioner, William Hanson, purchased at said first mentioned sale defendant's interest in lot 10 in block 68, and lot 1, in block thirty-nine.

Your petitioner, Charles T. Stearns, purchased at the said sale on the 31st day of December last, defendant's interest, being the undivided half of lots 2 and 7, in block 60; lots 3 and 8, in block 61; lots 3, 4 and 5, in block 64; lots 1 and 2, in block 73; and lot 2, in block 74, and that the time of redemption having expired, a sheriff's deed has been executed to your petitioner therefor.

Your petitioner, Herman Jenkins, jr., purchased at said sale, on the 31st day of December last, defendant's interest, the undivided half of lots 4 and 5, in block 60, and lot 6, in block 64; and at said sale on the 5th day of February, your petitioner purchased defendant's interest in lot 1, in block 30, and having paid a valuable consideration, has received a sheriff's certificate therefor.

And that by virtue of a writ of execution issued out of said district court, on a judgment in favor of Benjamin Parker, and against the said defendant, entered January 13, 1853, the said sheriff, on the 3d day of March inst., exposed for sale, and your petitioner, being the highest bidder therefor, purchased defendant's interest in lots 1 and 10, in block 76, in said town; and that your petitioner has also purchased, of Edward Dixon, defendant's interest in lot 9 in block 70, he having purchased the same at said first mentioned sale, and received a sheriff's deed therefor.

And your petitioners above mentioned, who purchased property at the first-mentioned sales, further represent, that the time for redemption of said property has already expired, and as your petitioners are informed and believe, sheriff's deeds have been prepared and executed to each of your petitioners for the several parcels of property so severally purchased by them.

Wherefore your petitioners pray, that they may be jointly and severally admitted as defendants in the above-entitled cause, and be permitted to exercise and enjoy all and singular the rights privileges of the said defendant therein, and to which they may be admitted consistently with the rules of this court. And that should this court decree a conveyance of said property to the complainant, as demanded in his complaint, then that your petitioners may be allowed by this court to share with the defendant and with each other all moneys already paid into court, and now under the control thereof, as the purchase-money of said property, and any other moneys now due, or to become due from the complainant to the defendant for the property described in said complaint, in proportion to the share of said property

1007

now held, claimed, or owned by each of your petitioners as above stated; or that your petitioners may be permitted, in case of such decree, to retain and hold said property, by paying their just proportion of the said purchase-money agreed upon between the parties to this suit in the contract of sale mentioned in the complaint in this action, and for such other and further relief as to your honor may seem just.

J. W. NORTH,
Solicitor for Petitioners and of Counsel.

Dated March 8, 1853.

TERRITORY OF MINNESOTA,
County of Ramsey, ss:

Samuel Estes, E. Snell, A. B. Fish, Edward Lippincott, Charles T. Stearns and Herman Jenkins, jr., the before named petitioners, being duly sworn, each for himself says, that he has heard the above petition read and knows the contents thereof, and that the matters therein stated relating to him are true, of his own knowledge, except the matters stated on information and belief, and to those matters, he believes them to be true.

SAMUEL ESTES,
C. T. STEARNS,
H. JENKINS, Jr.,
A. B. FISH,
E. LIPPINCOTT,
E. SNELL.

Subscribed and sworn before me, this 8th day of March, A. D. 1853.

GEO. W. PRESCOTT,
Notary Public, Min. Ter.

MINNESOTA TERRITORY,
Ramsey County, ss:

Geo. W. Prescott, of said county, being duly sworn, says, that on the 9th day of March, 1853, he served a true copy of the within petition and notice on Rice, Hollinshead and Becker, by giving the same to E. Rice, one of the said firm, at their office in St. Paul.

GEO. W. PRESCOTT.

Subscribed before me, this 18th day of March, 1853.

D. A. SECOMBE,
Notary Public in and for said Territory.

Copy of Order.

In Chancery, 1st District, county of Ramsey.

In the matter of
FRANKLIN STEEL
vs.
ARNOLD W. TAYLOR.

ST. PAUL, *March 18th*, 1853.

On reading and filing the petition of Samuel Estes, E. Snell, A. B. Fish, E. Lippincott, Herman Jenkins, jr., and Charles T. Stearns,

with proof of due notice of motion to the solicitors of the complainant and defendant above named; and on motion of J. W. North, solicitor for petitioners and of counsel, and on hearing D. A. Secombe, esq., solicitor and of counsel for the defendant, it is ordered, that the prayer of the petitioners be granted, and that the said petitioners be admitted as defendants in the above-entitled cause, in accordance with the prayer of said petition, and that said petitioners have forty days in which to file and serve an answer in said cause, should they deem it necessary to do so.

H. Z. HAYNER.

In Chancery, First Judicial District, county of Ramsey.

In the matter of

FRANKLIN STEELE
against
ARNOLD W. TAYLOR et als.

To RICE, HOLLINSHEAD & BECKER, and AMES & NELSON, Complainant's Solicitors; and to JOHN W. NORTH, Solicitor for William L. Larned et als., defendants.

You will please take notice, that on the 24th day of March, 1853, at 10 o'clock in the *afternoon*, the annexed petition will be presented to Hon. Henry Z. Hayner, chief justice, &c., at his chambers at St. Paul, in said county, and a motion made thereon for an order in conformity with the same.

DAVID A. SECOMBE,
Petitioner, in person.

March 24th, 1853.

Due service of the foregoing notice and annexed petition is hereby acknowledged, and further notice waived, this 24th day of March, 1853.

J. W. NORTH,
Solicitor for Wm. L. Larned and others.
AMES & NELSON, and
RICE, HOLLINSHEAD & BECKER,
Solicitors for Steele.

In Chancery, First Judicial District, county of Ramsey.

In the matter of

FRANKLIN STEELE
against
ARNOLD W. TAYLOR et als.

To the honorable HENRY Z. HAYNER, Chief Justice of the Supreme Court, and Judge of said court, of the first judicial district.

The petition of David A. Secombe respectfully shows to this court, that since the filing and service of the complaint in the above entitled

action, to wit, on the 17th day of March, 1853, by virtue of a writ of execution issued out of and under the seal of the district court of the county aforesaid, upon a judgment rendered in said court, on the 28th day of January, 1853, in an action wherein the said David A. Secombe was plaintiff, and Arnold W. Taylor, above named, was defendant, in favor of the said David A. Secombe, against the said Arnold W. Taylor, the sheriff of said county exposed for sale, and your petitioner being the highest bidder therefor, purchased the interest of the above named defendant in (being the undivided half) *in* the following described property mentioned in the complaint in this action, the same being a part of the real property claimed by the defendant in said complaint, to wit: All the strip of land lying between Maine street, so called, in the town of St. Anthony Falls, as surveyed by William R. Marshall, and the Mississippi river, commencing at a point on said Maine street, opposite the dividing line between lots numbered seventeen (17) and eighteen (18), in block No. fifty (50), in said town, and extending to the upper boundary of said town, together with the riparian right to the same belonging; also the sawmills in the bed of the Mississippi river, opposite block forty-seven (47), in said town, known or designated as follows, to wit: Sawmills numbered one (1), two (2), three (3), four (4), and seven (7); and that the said petitioner, having paid a valuable consideration, has received the said sheriff's certificate therefor.

Wherefore, your petitioner prays that he may be admitted as defendant in the above entitled cause, and be permitted to exercise and enjoy all and singular the rights and privileges of the said defendant therein, and to which he may be admitted consistently with the rules of this court; and that should this court decree a conveyance of said property to the complainant as demanded in this complaint, then that your petitioner may be allowed by this court to share with the defendant all moneys already paid into this court, and now under the control thereof, as the purchase-money of said property, and any other moneys now due or to become due from the complainant to the defendant, for *for* the property described in said complaint, in proportion to the share of said property which your petitioner purchased as above mentioned; or that your petitioner may be permitted, in case of such decree, to retain and hold said property by paying his just proportion of the purchase-money agreed upon between the parties to this suit in the contract of sale mentioned in the complaint in this cause, and for such other and further relief as to your honor may seem just.

DAVID A. SECOMBE, *in person.*

Dated March 18th, 1853.

MINNESOTA TERRITORY,
County of Ramsey, ss:

David A. Secombe, the petitioner above named, being duly sworn, say, that the foregoing petition is true of his own knowledge, except as

to matters therein stated on his information and belief, and as to those matters, that he believes it to be true.

DAVID A. SECOMBE.

Subscribed and sworn this 18th day of March, 1853, before me,
JAMES K. HUMPHREY,
Clerk Dist. Court.

Copy of Order.

IN CHANCERY,
1*st Judicial District, county of Ramsey.*

In the matter of
FRANKLIN STEELE
vs.
ARNOLD W. TAYLOR et als.

On reading and filing the petition of David A. Secombe, with proof of due service of notice of the presentation of the same, and of motion thereon to the solicitors of the complainant above named, to John W. North, solicitor for William L. Larned et als., defendants, and on motion of the said petitioner, in person, and no one appearing to oppose, it is ordered that the prayer of the said petitioner be granted, and that the said petitioner be admitted as defendant in the above-entitled cause in conformity with the prayer of the said petition; and that the said petitioner have forty days in which to file and serve an answer in said cause, should he deem it necessary to do so.

H. Z. HAYNER.

At Chambers, at St. Paul, this 24th day of March, 1853.

Copy of Notice of Trial.

DISTRICT COURT,
1*st District, county of Ramsey—In Chancery.*

FRANKLIN STEELE
vs.
ARNOLD W. TAYLOR et als.

To Ames & Nelson, and Rice, Hollinshead & Becker, Complainant's Solicitors:

You will please take notice that the above-entitled cause will be brought on for trial at the next general term of the said court, to be held at St. Paul, in said county, on the third Monday of April next, at 10 o'clock in the *afternoon*, or or as soon thereafter as counsel can be heard.

D. A. SECOMBE,
WILKIN & VAN ETTEN,
BABCOCK & WILKINSON, and
J. W. NORTH,
Solicitors for Defendants.

Dated at St. Anthony, March 24th, 1853.

Copy of Notice of Motion to dismiss petitioners an vacate orders.

TERRITORY OF MINNESOTA,

District Court, 1st district, county of Ramsey—in Chancery.

FRANKLIN STEEL, complainant,
against
ARNOLD W. TAYLOR, defendant.

GENTLEMEN: You are hereby notified, that on the second day of May, 1853, before the honorable William H. Welch, chief justice, at his chambers, in the town of St. Paul, a motion will be made in the above cause to dismiss the petitions of William L. Larned and others, Samuel Estes and others, and David A. Secombe, filed on the 14th, 18th, and 24th days of March, 1853, respectively, and to vacate the orders entered on those days granting the prayers of the said petitioners, for the following reasons, to wit:

1. Because such petitions are unnecessary, unprecedented, and in violation of well-settled principles of equity and practice.

2. Because the petitioners have no interest whatever in the said cause, or the property or money which is the subject-matter of the contest therein.

3. Because the said orders are both in form and substance illegal and improper, for the following reasons, viz: They admit upon the record, as defendants, persons having no interest in the subject-matter of the suit. They admit upon the record, as defendants, persons whom the complainant was not required by the practice of courts of equity to make parties, and who could not have been bound by any decree in the cause. They are vague and indefinite, and, if they mean anything, are a granting of the entire prayers of the petitioners; thus disregarding the rights of the complainant and defendant, and arbitrarily disposing of their property before a final hearing of the cause upon its merits. They are, in effect, a violation of the injunction issued in the cause.

You are also hereby notified, that the affidavit of William Hollinshead, a copy of which is hereto annexed, together with the papers on file, will be made in support of said motion.

Dated St. Paul, April 25th, 1853.

Yours, respectfully,

R. R. NELSON,
RICE, HOLLINSHEAD & BECKER,
Sol'rs for Comp't.

To J. W. NORTH and D. A. SECOMBE, esqs., sol'rs for petitioners.

TERRITORY OF MINNESOTA,
District court, 1st district, county of Ramsey—in Chancery.

FRANKLIN STEELE, complainant,
vs.
ARNOLD W. TAYLOR, defendant.

TERRITORY OF MINNESOTA,
Ramsey county, ss:

William Hollinshead, of said county, being sworn saith, that he is one of the solicitors for the complainant in the above entitled cause.

That R. R. Nelson, esq., is also solicitor for the said complainant; that the management of the said cause has, since the argument of the motion to dissolve the injunction therein, been chiefly entrusted to the said R. R. Nelson and this defendant; that when the notices and petitions in said cause, dated the 4th, 8th, and 24th of March, 1853, respectively, were served, and when the orders granting the prayers of the petitioners were made, to wit, on the 14th, 18, and 24th of March, 1853, the said R. R. Nelson, esq., Franklin Steele, the complainant, and this deponent, were absent from the Territory of Minnesota. That this deponent was not informed of the said petitions, nor of the intention of petitioners therein named to apply for said orders, until after his return to the said Territory on the 11th day of April, 1853; that as deponent is informed and believes, the said R. R. Nelson, esq., and the said complainant, Franklin Steele, were not informed of the said petitions, nor of the motions for said orders, until after the granting of the prayers of the petitioners.

That as deponent is informed and believes, the reason why the motions for said orders were not opposed by the complainant's solicitors, was, that the partners of the said R. R. Nelson, esq., and this deponent, upon whom the notices thereof were served, were unable to advise with the complainant, their client, because of his absence, and were not aware of the precise condition of the cause; that the granting of the prayers of the said petitioners, and the making of the said orders was, and is, highly prejudicial to the rights and interests of the complainant, and would have been opposed, had the said R. R. Nelson and this deponent been present and advised thereof; and further this deponent saith not, save that he asks that the said orders may be vacated, and the solicitors of the said complainant heard in opposition to the prayers of the said petitioners.

WM. HOLLINSHEAD.

Sworn to and subscribed before me, this 25th day of April, 1853.
J. VAN ETTEN,
Notary Public, Min. Ter.

Copy of John Rollins's Affidavit, read on motion to dismiss petitions and vacate orders.

TERRITORY OF MINNESOTA,
District court, 1st district, Ramsey county—in Chancery.

FRANKLIN STEELE, complainant,
against
ARNOLD W. TAYLOR, defendant.

RAMSEY COUNTY, *ss:*

John Rollins, of said county, being duly sworn, says, that he is one of the defendants in the above entitled cause; that on about the twentieth day of April instant, he had a conversation with Franklin Steele, the above named complainant, at St. Anthony Falls, and that said Steele then and there informed this deponent, that he had arranged or agreed on the preliminaries of a settlement of the above entitled cause with Arnold W. Taylor, the above named defendant, and that an attorney from New York, by the name of Barstow, was coming on to close up the matter for Mr. Taylor; that, by the terms of such settlement, those who had had executions against the said Taylor, and had sold property thereon, at the place above named, at sheriff's sale, and those who had purchased said Taylor's interest in said property, would receive nothing, but would lose their money. But that those who then had judgments or demands against the said Taylor, which were not satisfied, would receive their money thereon.

And deponent verily believes, from the information received from said Steele, that the said Steele and Taylor have conspired together to deprive the purchasers of said property, and to defraud the judgment creditors of said Taylor of their just demands against him.

JOHN ROLLINS.

Subscribed and sworn before me, this 27th day of May, 1853.
GEO. W. PRESCOTT,
Notary Public, Min. Ter.

Copy of S. W. Farnham's Affidavit, read on motion to dismiss petitions and vacate orders.

Minnesota Territory, District Court, 1st district, county of Ramsey.

FRANKLIN STEELE
against
ARNOLD W. TAYLOR and others. } In Chancery.

COUNTY OF RAMSEY, *ss:*

Sumner W. Farnham, of said county, being duly sworn, says, that he is one of the defendants in the above entitled cause; that on or about the twentieth day of April instant, the deponent had a conversation with Franklin Steele, the above named complainant, at St. Anthony Falls, about the matters in controversy in the above entitled cause,

and that said Steele then and there *and there* informed this deponent, that he, the said Steele, had settled with said Taylor, the above named defendant, and that there was nothing now to be done, except that the said Taylor was to confess a judgment in the above entitled cause, and that then the court would decree him, the said Steele, a deed of the property in controversy in this suit, and that the said Taylor's attorney, whose name was Barstow, was coming on from New York to confess such judgment and close up the business for said Taylor; and that those who had purchased the property of said Taylor at sheriff's sale would lose the money they had paid, and that those who had had executions against said Taylor, and had sold property thereon and the executions were returned satisfied, would lose the amount of their executions. And deponent is further informed and believes, that the said Steele has agreed, in said settlement with said Taylor, to pay the said Taylor the sum of twenty-four thousand dollars, and assume all of said Taylor's liabilities in this Territory, as the inducement for said Taylor to confess said judgment and allow the said Steele to take a decree, giving to him the title to the property in controversy in this suit. And this deponent verily believes, that there is collusion being practised between the said Steele and Taylor, and that they have conspired together to deprive the other defendants in this cause of their just rights, and to defraud the other purchasers of said Taylor's property of their just title to the same. And deponent further says that he verily believes, that the only object the said Steele has in making the motion now pending in this cause, is to get rid of the other defendants, so that he may the more easily consummate the fraudulent contract he has entered into with said Taylor.

S. W. FARNHAM.

Subscribed and sworn before me, this 20th day of April, 1853.

GEO. W. PRESCOTT,
Notary Public, Min. Ter.

Copy of D. A. Secombe's Affidavit, read on motion to dismiss petitions and vacate orders.

TERRITORY OF MINNESOTA,
County of Ramsey.
First District Court.

FRANKLIN STEELE
against
ARNOLD W. TAYLOR et als. } In Chancery.

On motion of Complainant to dismiss petitions and vacate orders.

RAMSEY COUNTY, *ss:*

David A. Secombe, of said county, being duly sworn, says, that he is solicitor for Arnold W. Taylor, the above named defendant, and also is himself one of the defendants in this action.

Deponent further says, that on the 25th day of May, 1853, Franklin Steele, the complainant in this action, filed and served a copy of his certain bill of complaint in this action; and on the same day procured to be issued and served a writ of injunction and subpœna to the defendant to appear and answer the said bill of complaint; that on the 5th day of July, 1852, the defendant above named, Arnold W. Taylor, by D. A. Secombe and Wilkin and Van Etten, entered his appearance with the clerk of the said court, and served notice of the same on the solicitors of the said complainant; that on the 18th day of June, 1852, the said complainant served an order requiring the defendant Taylor to file his plea, answer, or demurrer to the said bill of complaint, on or before the 17th day of July, 1853; that on the said 17th day of July the said defendant Taylor filed and served a copy of his certain answer to the said bill of complaint of the said complainant, and on the said day last mentioned served on the said complainant notice of a motion to dissolve the injunction in this action; that on the 26th day of July, 1852, the said motion came on for hearing and was denied, with costs; which said bill of complaint, writ of injunction, subpœna to appear and answer, order to plead, answer or demur, appearance of defendant, answer of defendant, and notice and decision of motion above mentioned, are herein particularly referred to, being on file and made a part of this affidavit.

Deponent further says, that since the argument of the motion to dissolve the injunction in this action, to wit, since the 26th day of July, 1852, until the day of giving notice of this motion, to wit, the 25th day of April, 1853, no proceedings whatever has been taken in this action on the part of the said complainant; but that on the 24th day of March, 1853, there having been filed in this action no other pleading than the bill of complaint and answer above mentioned, and this cause being at issue upon said bill and answer, notice of trial was given to the complainant in this cause by deponent, as will appear by a copy of the same, together with an affidavit of the service of the same, on file in this cause, and herein referred to and made a part of this affidavit.

And deponent further says, that a note of issue in this cause having been furnished the clerk of this court by deponent, this cause was entered by said clerk upon the calendar of the last general term of this court, and still remains therein undisposed of.

Deponent further says, that on the day on which the petitioner of William L. Larned et als. was presented to the court in this cause, to wit, on the 14th day of March, 1853, Edmund Rice, esquire, one of the solicitors of the complainant in this cause, told deponent that there was no objection whatever on the part of the complainant Steele to the admission of the said petitioners as defendant in this cause; and that his (Steele's) interests were not in the least prejudiced thereby; and that on the day on which the petition of deponent was presented to the court in this cause, to wit, on the 24th day of March, 1853, said Edmund Rice, esquire, stipulated with deponent for the imme-

diate presentation of the said petition, and making the motion thereon for the admission of deponent as a defendant in this cause, and told deponent that the complainant Steele made no objection to the same.

Deponent further says, that the defendant Taylor is neither a resident of this Territory, nor possesses other property therein than the property described in the bill of complaint in this cause, nor has he been a resident of this Territory, or possessed other property therein than as aforementioned, during the last nine months.

DAVID A. SECOMBE.

Subscribed and sworn to this 30th day of April, 1853, before me,

JAMES K. HUMPHREY,
Cl'k Dist. Court.

Copy of J. W. North's Affidavits, read on motion to dismiss petitions and vacate orders.

MINNESOTA TERRITORY,
District Court of 1st district, county of Ramsey.

FRANKLIN STEELE
agt.
ARNOLD W. TAYLOR and others. } In Chancery.

COUNTY OF RAMSEY, *ss:*

John W. North, of said county, being duly sworn, says, that he is one of the defendants in the above entitled cause, and is solicitor of and counsel for all the other defendants therein, except Arnold W. Taylor and David A. Secombe, esqs.; that at the last November term of the district court of this county, deponent recovered a judgment against the said Arnold W. Taylor for the sum of five hundred and thirty-five dollars and costs of suit; that so far as deponent's knowledge extends, the said Taylor had no other property in this Territory out of which said sum could be raised than his real estate in the town of St. Anthony Falls, on a part of which property said execution was levied; that on the day, or day but one before the sheriff's sale of said property on deponent's execution, to wit, on the 28th or 27th days of December last, Franklin Steele, the above named complainant, called at the office of this deponent at St. Anthony Falls, and in conversation in regard to said sale, requested this deponent to have the back lots sold first, and not to sell anything connected with the water-power; and said that if deponent would have the back lots sold, he should not meddle with them, but that if any of the water-power was sold he should have to redeem it; that the said Steele frequently inquired of deponent about the sales that had taken place of said property, and those that were yet to come, and borrowed of deponent a memorandum-book for the purpose of obtaining a correct list of the lots sold, and of the purchasers, and frequently said to deponent that he should make no set-

tlement with said Taylor that would deprive any who had claims against him of their just dues; and that said Steele did not at any time, to deponent's knowledge, forbid any sale of said property, or interpose any obstacle to such sale.

But since the return of said Steele from the East, and within the last two weeks, deponent is informed and believes, that the said Steele is representing that he has made a settlement with said Taylor, by which settlement the said Taylor is to confess judgment in the above entitled cause, or is to allow the said Steele to move for a decree therein, and take a decree without opposition from said Taylor.

And deponent further says, that he has been informed by J. Van Etten, esq., one of the solicitors for said Taylor in this cause, to wit, on the 29th day of April instant, that there was undoubtedly a settlement between the said Steele and Taylor, by which the said Steele was to be allowed to take a decree in this cause without opposition from said Taylor; and that the object of said Steele in making the present motion was, without doubt, to give him an opportunity of taking his decree in accordance with said terms of settlement.

And this deponent further says, that at the time of presenting the several petitions for the admission of defendants in this cause, due service of the notice of said petition and motion had been given Messrs. Rice, Hollinshead, and Becker, the solicitors of said Steele, and that said solicitors did not appear to have any objection to the admission of such defendants, and did not oppose such petitions when presented.

And deponent further says, that the said defendants who have been admitted by order of this court, and for whom deponent is solicitor, have never been served with copies of the pleadings in this cause.

J. W. NORTH.

Subscribed and sworn before me, this 30th day of April, 1853.

W. H. WETCH.

Copy of Order dismissing petitions and vacating orders.

MINNESOTA TERRITORY,
District Court, 1st district, county of Ramsey.

FRANKLIN STEELE, complainant, against ARNOLD W. TAYLOR, defendant. } In Chancery.—Order, May 4, 1853.

This cause came on to be heard, on a motion made by the solicitors for the complainant to dismiss the petitions of William L. Larned and others, Samuel Estes and others, and David A. Secombe, filed on the 14th, 18th, and 24th days of March, 1853, respectively, and to vacate the orders entered in this cause on those days, granting the prayers of the said petitioners, and was argued by counsel; and the court being fully advised in the premises, it is hereby ordered, that the petitions of

William L. Larned and others, Samuel Estes and others, and David A. Secombe, filed in this cause on the 14th, 18th, and 24th days of March, 1853, respectively, be, and the same are hereby, dismissed.

And it is further ordered, that the orders made in this cause on the 14th, 18th, and 24th days of March, 1853, granting the prayers of the petitioners above referred to, be, and the same are hereby, vacated.

W. H. WETCH,

At Chambers, May 4th, 1853. *Chief Justice.*

Copy of Consent for Decree.

In the District Court, in and for the first District and County of Ramsey, in Territory of Minnesota, in Chancery.

FRANKLIN STEELE
vs.
ARNOLD W. TAYLOR.

It is hereby stipulated and agreed by and between the respective parties to the above entitled cause, as follows:

The defendant, Arnold W. Taylor, consents to, and hereby does, withdraw his answer to the said complainant's bill of complaint filed in this cause, and stipulates and agrees that the said bill shall, by a proper and sufficient order to be duly entered in said cause for that purpose, be taken as confessed by and against him; and that thereupon a final decree in said cause shall be signed, filed, and enrolled, against the said defendant, whereby it shall be in full and ample terms ordered, adjudged, and decreed, that the said defendant shall fully and specifically perform, discharge, and fulfil, on his part, all the terms, agreements, stipulations, contained in the bond or agreement set forth in the said bill of complaint, which decree shall specify the acts to be performed by the defendants, and shall be, and be deemed to be, a full decision and determination of the court in favor of the whole prayer of said complainants in their said bill; that the said decree may be settled and signed at any time hereafter, in term or vacation, without any further notice by either party to the other, such notice being hereby waived, and may be filed and enrolled as soon as signed; and if signed, filed, and enrolled in vacation, it shall be of the same force and effect as if signed, filed, and enrolled in term. And the said defendant hereby authorizes any solicitor or counsellor of said court to appear for him and in his name, to do whatsoever may be or become necessary to be done for the purpose of fulfilling or making lawful and effectual the stipulation hereinbefore contained. And said defendant hereby waives and fully releases all errors and irregularities which may have occurred in any of the proceedings on the part of the complainant in said cause, and which may hereafter occur in any subsequent proceedings which may or can be had therein, pursuant to this stipulation, and he agrees that he will not make any motion to set aside, or otherwise vacate or annul, or stay any of the proceedings in said cause, and that he will not take any appeal from such decree when made.

And the said defendant further stipulates and decrees, that in case he shall, for any cause whatsoever, fail to perform and fulfil such decree when made, such decree shall, for all purposes whatsoever, as well the purposes of conveyances and assignments, as of covenants by and against the said defendant, his heirs, or assigns, and personal representatives, have the same force and effect, and purpose, and sustain the same obligations and liabilities as the deeds, assignments, instruments in writing, or covenants, required by the said decree to be executed by said defendant, would have imposed and sustained if actually executed by him; and that a clause in full and apt words to that effect shall be inserted in the said decree, but this clause shall not impair the complainant's right to any lawful and proper proceedings to enforce a performance of such decree.

And the said defendant also stipulates and decrees, that he will at all times keep and save the said defendants, and each of them, jointly and severally, and their and each of their heirs, personal representatives, and assigns, indemnified against and harmless, all conveyances, liens, incumbrances, and claims whatsoever, which have been executed, created, suffered, or permitted, by the said defendant, of, upon, against, in, or to the lands, tenements, real estate, personal property, or choses in action, mentioned in the said bond or agreement set forth in the said bill, or any pieces, parcels, or article thereof, subsequent to the date of the said bond, and against and from all costs, charges, and expenses, which have accrued or arisen, or hereafter may accrue or arise thereon, in consequence thereof.

The said complainants stipulate and agree to perform and fulfil, on their part, all things which by such decree they, or either of them, shall be required to perform.

FRANKLIN STEELE,
ARNOLD W. TAYLOR.

Dated March 23, 1853.

RICE, HOLLINSHEAD & BECKER,
Sol'r for Compl't.

AMES & NELSON, *Sol'rs for Compl't.*
BABCOCK & WILKINSON, *Sol'rs for Def't.*
WILKIN & VAN ETTEN, *Sol'rs for Def't.*

Copy of "Decree."

In the District Court, in and for the 1st Judicial District and County of Ramsey, in the Territory of Minnesota—in Chancery.

FRANKLIN STEELE, complainant,
against
ARNOLD W. TAYLOR, defendant.

Decree.

This cause coming on to be heard, on the fourth day of May, 1853, and the consent and agreement in writing, duly signed by the said

defendant, having been presented and filed, it is, on motion of Rice, Hollinshead and Becker, and R. R. Nelson, solicitors for complainant, hereby ordered, adjudged, and decreed, that the said defendant, Arnold W. Taylor, convey, by good and sufficient warrantee deed, to the said complainant, Franklin Steele, his heirs and assigns, all of the right, title, and interest of him, the said Arnold W. Taylor, of, in, and to the water-power, mills, and village or town lots, and other property at St. Anthony Falls, as described in the deeds of conveyance from the said complainant, Franklin Steele, to the said defendant, Arnold W. Taylor, excepting so much thereof as was sold and conveyed jointly by the said complainant, Franklin Steele and Ard Godfrey, and the said defendant, Arnold W. Taylor, and excepting the two islands mentioned in one of the said deeds, to wit, "Hennepin, or the lower island," and "Boom Island," free and discharged of all liens and incumbrances created, suffered or permitted by the said defendant or his assigns, subsequent to the bond or agreement set forth in the complainant's bill of complaint.

That the said defendant, Arnold W. Taylor, convey by good and sufficient quit-claim deed to the said complainant, Franklin Steele, his heirs and assigns, all the right, title, and interest of him, the said Arnold W. Taylor, of, in, and to "Hennepin, or the lower island, and Boom Island," as the same are described in the deeds of conveyance from the said complainant, Franklin Steele, to the said defendant, Arnold W. Taylor.

And it is further ordered, adjudged, and decreed, that the said defendant, Arnold W. Taylor, duly assign, transfer, and set over, unto the said complainant, Franklin Steele, his heirs and assigns, by good and sufficient deeds of assignment and assurance in law, all the right, title, and interest of him, the said Arnold W. Taylor, of, in, and to all bonds, mortgages, and other choses in action, taken on sale of any portion of the water-power, mills, and village or town lots, or other property at St. Anthony Falls, as described in the deeds of conveyance from the said Franklin Steele to the said Arnold W. Taylor; and that, in case any of the said bonds, mortgages, choses in action have been disposed of by the said Arnold W. Taylor, then he, the said Arnold W. Taylor, shall account to the said complainant, Franklin Steele, for the same.

And it is further ordered, adjudged, and decreed, that if the said defendant, Arnold W. Taylor, shall neglect and refuse to make and execute the warrantee deed, quit-claim deed, and the deeds of assignment and assurance in law, herein before ordered and decreed to be made by him, conveying the real and personal property herein before specified, in the manner herein before specified, and to deliver the same to the said complainant, Franklin Steele; then this decree shall stand in the place and stead of such deeds, assignments, and assurances, in the law, and be held to convey and transfer the said real and personal property, as it is herein before required that the same shall be conveyed and transferred.

And it is further ordered, adjudged and decreed, that the sum of twenty-four thousand two hundred forty dollars, paid into this court by the said complainant, Franklin Steele, and by order of the court, made on the twenty-eighth day of May, 1852, deposited in the safe of the Minnesota outfit, shall be paid to the said defendant, Arnold W. Taylor, or his solicitors, or his duly authorized attorney in fact.

Copy of Appeal Bond.

MINNESOTA TERRITORY,
First District Court, county of Ramsey.

FRANKLIN STEELE
vs.
ARNOLD W. TAYLOR et als. } In Chancery.

Bond for Appeal.

Know all men by these presents, that we, William L. Larned, John Rollins, James McCann, O. W. Rice, Charles F. Stimson, Roswell P. Russell, Benjamin Parker, Edward Lippincott, Charles Brown, John M. Durnham, William H. Cole, E. F. King, David A. Secombe, John W. North, Sumner W. Farnham, Charles T. Stearns, James B. Gilbert, Caleb D. Dorr, H. Jenkins, jr., and Eli C. Jones, defendants in the above entitled cause, as principals, and W. D. Garland and R. P. Upton, as sureties, are held and firmly bound unto Franklin Steele, complainant in said cause, in the penal sum of one thousand dollars, lawful money of the United States, to be paid to the said Franklin Steele, his executors, administrators or assigns, for which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this fifth day of May, A. D. one thousand eight hundred and fifty-three.

Whereas, on the fourth day of May, 1853, an order was made in the above and foregoing entitled cause by the court, before the honorable William H. Welch, chief justice of the supreme court of the Territory of Minnesota, and judge of the said district court of Ramsey county, that the petitions of the above bounden defendants and others, filed in this cause on the 14th, 18th and 24th days of March, A. D. 1853, respectively, be dismissed; and that the orders made in this cause on the 14th, 18th and 24th days of March, 1853, granting the prayer of the petitioners above referred to, be vacated. And whereas the above bounden defendants are about to enter an appeal from the said orders of said court to the supreme court of this Territory: Now, therefore, the condition of this bond is as follows, to wit: If the above

bounden and others, defendants, shall prosecute their said appeal with all due diligence, and shall pay, satisfy, and perform the order or decree of the supreme court, and all costs, in case the said orders of the district court shall be affirmed, then the above bond shall be void, otherwise shall remain in full force and virtue.

JOHN ROLLINS, [L. S.]
BENJAMIN PARKER, [L. S.]
R. P. RUSSELL, [L. S.]
WM. L. LARNED, [L. S.]
E. LIPPINCOTT, [L. S.]
C. F. STIMSON, [L. S.]
CHARLES BROWN, [L. S.]
JOHN M. DURNHAM, [L. S.]
WILLIAM H. COLE, [L. S.]
JAMES McCANN, [L. S.]
E. F. KING, [L. S.]
O. W. RICE, [L. S.]
DAVID A. SECOMBE, [L. S.]
J. W. NORTH, [L. S.]
S. W. FARNHAM, [L. S.]
CHAS. T. STEARNS, [L. S.]
JAMES B. GILBERT, [L. S.]
CALEB D. DORR, [L. S.]
H. JENKINS, JR., [L. S.]
ELI C. JONES, [L. S.]

WM. D. GARLAND, [S.]
R. P. UPTON, [S.]
Sureties.

Signed, sealed and delivered, in presence of—
WILLIAM HANSON.

TERRITORY OF MINNESOTA,
Ramsey county, ss:

William D. Garland and R. P. Upton, sureties, being duly sworn, say, each for himself, that they are residents of this Territory, and that they are each worth the amount mentioned in the within bond, exclusive of property exempt from execution.

WM. D. GARLAND,
R. P. UPTON.

Subscribed and sworn to this 5th day of May, 1853, before me.
LARDNER BOSTWICK,
Justice of the Peace.

Copy of Notice of Appeal.

MINNESOTA TERRITORY,
First District Court, county of Ramsey.

FRANKLIN STEELE
vs.
ARNOLD W. TAYLOR et als. } In Chancery.

Notice of Appeal.

To James K. Humphrey, esqr., Clerk of the said Court:

You will please take notice, that William L. Larned and others, Samuel Estes and others, and David A. Secombe, defendants in the above-entitled cause, appeal to the supreme court of this Territory, from the order of court made in the above-entitled cause on the 4th day of May, 1853, before the honorable William H. Wetch, chief justice of the said supreme court, and judge of the first judicial district, dismissing the petitions of the said defendants filed in this cause on the 14th, 18th, and 24th days of March, 1853, respectively, and vacating the orders made in this cause on the 14th, 18th, and 24th days of March, 1853, granting the prayers of the petitioners above referred to.

Also take notice, that the appeal bond, required by statute, is on file in this cause.

Dated May 6th, 1853.

JOHN W. NORTH and
DAVID A. SECOMBE,
Solicitors for the above-named Defendants.

Copy of Points and Authorities.

The Supreme Court of Minnesota Territory.

FRANKLIN STEELE, respondent,
against
ARNOLD W. TAYLOR, et als., appellants. } In Chancery.

Appeal from Order.

William L. Larned and others, Samuel Estes and others, and David A. Secombe, defendants in this cause, have entered their appeal to this court, from the order of court made in this cause on the 14th day of May, 1853, in the district court of this 1st district for the county of Ramsey, before the honorable William H. Welch, chief justice of the said supreme court, and judge of the said district court, dismissing the petitions of the said appellants filed in this cause in the said district court, on the 14th, 18th, and 24th days of March, 1853, respectively; and vacating the orders made on those days, in this cause, in said district court, granting the prayers of the said petitions.

And now come the appellants, and pray this honorable court to reverse and annul the said order of the district court appealed from as

aforesaid; and for the reversal and annulling thereof, the said appellants rely upon the following points, to wit:

I. The said order appealed from was improperly granted, for the reason that all the grounds on which it was asked were untrue and insufficient.

II. The evident object for which said order was asked, and the only effect it could have, was to carry out and consumminate a collusion and conspiracy between said Steele and Taylor, to deprive those appellants of their equitable rights.

III. The said orders of the 14th, 18th, and 24th days of March, 1853, were taken by default and consent, and therefore were not properly vacated without the assent of both parties.

IV. The respondent herein had notice, not only of the application to the court for the said orders, but also of the particular form of the application, and having suffered the said orders to be taken by default, could not afterwards properly object to them in mere matter of form, even though the form was irregular.

5. The proper form of application for the said orders was a matter resting in the sound discretion of the court, and that discretion having been once exercised, could not properly be reviewed.

6. In matter of form the said application to the court by petition was regular, precedented, and in accordance with the well-settled principles of equity practice.

7. The said petitioners, the appellants in this court, had an interest in the real property or money which was the subject of litigation in this cause.

8. That interest a court of chancery would be bound to recognise and protect, whenever it should be brought by proper application within its judicial knowledge.

9. The applications to the court below were necessary, and in matter of substance, if not in matter of form, properly made; and the said osders of court were just and equitable to all the parties concerned, and were therefore properly made, and ought not to have been vacated.

10. If any orders were admissible in the instance of the one appealed from, it should have been, at most, modification of the former orders, and that without prejudice to the rights of the petitioners.

11. The order of court appealed from to this court is irregular, unprecedented, unjust and inequitable; and, therefore, ought to be reversed.

Justice under the law and rules of chancery proceedings requires of this court that the interests of these appellants in this cause shall be protected.

In support of which said points, the said appellants will cite the following authorities, to wit:

3 Paige, 573; 4 Ib. 476 & 8; 7 Ib. 290; 3 Johns. 543; 10 Ib. 517; 12 Ib. 521; 1 Bar. Ch. Pr. 579; Ib. 583; Ib. 595 & 6; 1 Moulton's Ch. Pr. 32; 2 Ib. 77; 2 Vesey, 113; 13 Ib. 394; Story's Eq. Pl. 342;

Ib. 541; 1 Story's Ep. Ju., par. 496; 2 Ib. par. 742; 16 Serg. & Rawl, 267; 11 Wend. 448; 4 J. J. Marsh., 396; Daniel Ch. Pr. 1801; Adams Eq. 312; Ib. 316; Ib. 713; R. S. Min. Ter., ch. 94, par. 76.

SUPREME COURT,
Territory of Minnesota, ss:

I, George W. Prescott, clerk of the supreme court above named, certify the foregoing to be a true transcript of the printed "paper book" referred to and attached to the answer of David A. Secombe, as the same appears on file in the appealed cause in said supreme court, brought from the district court of Ramsey county.

[L. S.] Witness my hand and the seal of said supreme court, this 8th day of May, A. D. 1856.

G. W. PRESCOTT, *Clerk*

MINNESOTA TERRITORY,
District Court, 2d district, county of Ramsey.

FRANKLIN STEELE
against
JAMES H. TRADER and others. } Stipulation.

It is hereby stipulated by and between the respective parties to the above entitled action, that the answer of David A. Secombe, one of the defendants in this action, filed herein this day, with the exception of that part of said answer which describes his title to a part of the subject-matter of this action as derived from the sheriff's deeds therein set forth, shall, in connection with the answers of the other defendants who have answered herein, be considered and taken to be the amended answers of the said other defendants, as effectually as though it had been made separately by each of said defendants.

Dated this 8th day of January, 1855.

RICE, HOLLINSHEAD & BECKER,
Attorneys for Plaintiff.

January 8th, 1855.

NORTH & SECOMBE,
Defendant's Attorneys.

The foregoing endorsed: Minnesota Territory, supreme court—Franklin Steele against James H. Trader and others—Stipulation—North & Secombe, defendant's attorneys—Filed January 8th, 1855—Geo. W. Prescott, clerk.

Notice of Motion to strike out portions of Amended Answer.

In the District Court in and for the second judicial district and county of Ramsey, in the Territory of Minnesota.

FRANKLIN STEELE
against
DAVID A. SECOMBE and others. }

GENTLEMEN: You will please take notice, that on Friday, the twenty-sixth day of January instant, at 10 o'clock a. m., before the

honorable M. Sherburne, judge of the said court, at his chambers in the city of St. Paul, a motion will be made on behalf of the plaintiff in the above entitled action, to strike out the portion of the amended answer of D. A. Secombe, a defendant, herein after specified, with costs, for the reasons herein after specified, to wit:

To strike out the following portion of the said amended answer:

"And this defendant further answering denies, that on the seventeenth day of January, one thousand eight hundred and fifty-two, the said plaintiff purchased of, or from the said Arnold W. Taylor, all the interest of him, the said Arnold W. Taylor, or any part thereof in real estate before that time held and owned by him and the plaintiff, as tenants in common, as in said complaint set forth, for the sum of twenty-five thousand dollars, or for any sum whatever, as in said complaint alleged."

1. Because the said denial is a negative pregnant, and limited to the time specified in the complaint.

2. Because the defendant admits the execution, acknowledgment, and record of the bond or agreement in writing, given by Taylor to Steele, and set forth in the complaint; admits the payment of the one thousand dollars by the plaintiff to Taylor on the ensealing and delivery thereof, according to the terms thereof; and sets up as part of his answer the payment of $24,240, the remainder of the purchase money, with the addition of interest and exchange, into the court, on the 24th day of May, 1852, by the plaintiff; and now without alleging any fact or reason why that was not a purchase by the plaintiff from Taylor, if the land described for the sum specified, inconsistently and falsely denies that it was such purchase.

3. Because the said part of the said answer is inconsistent with and refuted by the other facts of the said answer.

4. Because the same is sham.

5. Because the same is frivolous.

6. Because the same is false.

7. Because the same is not stated in conformity with the statute.

And to strike out the following portions of the said amended answer:

"But this defendant further answering denies, that the said plaintiff entirely failed to perform the conditions of the said bond or agreement in writing on his part, as he was in and by the same bound to do, in order to entitle him to a performance thereof on the part of the said Arnold W. Taylor; and that by reason of the non-performance of the said bond or agreement in writing on the part of the said plaintiff, the said bond or agreement in writing became utterly void and of no effect; and that the said Arnold W. Taylor, by reason of the said non-performance of the condition of the said bond on the part of the said plaintiff, was released from any obligation to perform the conditions of said bond on his part, and utterly refused so to do."

1. Because it is an attempt to set up conclusions of law without the allegation of any fact whatever to support them, or either of them.

2. Because the conclusions stated are false. A failure to perform by either party did not vitiate the bond, nor did such failure release the other party.

3. Because the said portion of said answer is false. The plaintiff did not "utterly fail" to perform the conditions, because the defendant has admitted that he paid the $1,000 down, and has shown by his answer how he tried to pay the remainder of the purchase-money, and how he afterwards did pay it into this court. Arnold W. Taylor did not "utterly" refuse to comply with his bond, but as is fully shown by the admissions of the defendant, and his amended answer, did entirely comply with it.

4. Because the said portion of the said amended answer is not pleaded issuably, or, in other words, does not contain material facts or allegations. The only issue that could be raised upon it would be the averment of and performance by the plaintiff, and a denial thereof by the defendant. The question as to whether the plaintiff performed or not is a legal question, and must arise from facts. The facts are illegally and improperly omitted.

5. Even if the plaintiff did not perform, the defendant has no right to complain. Taylor, the obligor, had a perfect right to waive the performance of the whole or any part of the conditions. The defendant has no legal right to set up a default which Taylor did not allege; no fact showing fraud, or collusion to injure others, being stated.

6. Because the same is sham.

7. Because the same is frivolous.

8. Because the same is not stated in conformity with the statute.

And to strike out the following portion of the said amended answer:

"And this defendant further answering denies, that the two conveyances last mentioned and set forth in the complaint in the action, or either of them, were made in pursuance of, or in conformity with, the bond or agreement in writing mentioned and set forth in said complaint, as in said complaint alleged."

1. Because no fact is alleged showing that the legal conclusion stated (which can only arise from an inspection of the papers) is correct.

2. Because it is a statement of a legal conclusion without any fact to support it.

3. Because the demurrer of the plaintiff to a statement precisely similar in the answer of the defendant has been sustained by the court in this cause.

4. Because it is clear from an inspection of the papers set forth in the complaint, the execution of which is admitted, that the conveyances were made in pursuance of and in conformity with the bond.

5. Because the same is inconsistent with the admissions appearing upon the face of the said amended answer.

6. Because the same is sham.

7. Because the same is frivolous.

8. Because the same is not in conformity with the statute.

And to strike out the following portion of the said amended answer:

"And the defendant denies that in the certain suit in chancery mentioned in said complaint, and specifically set up and pleaded in this answer, the court ordered, adjudged, or decreed the said conveyances last mentioned and set forth in said complaint, or either of them, to be made, or that they, or either of them, were made in obedience to such decree, as is in the said complaint alleged."

1. Because it is false, the defendant having set up the decree which he says has not been made in his answer.

2. Because it does not make one particle of difference in his case, whether the decree was made or not, the plaintiff relying for his title upon the bond, and the deeds made pursuant to it, and such decree is not averred in the complaint, but is only referred to in the recital of one of the deeds therein referred to.

3. Because the same is sham.

4. Because the same is frivolous and has been held bad by this court, on demurrer in this cause.

5. Because the same is not in conformity with the statute.

And to strike out the following portion of the said amended answer:

"And this defendant further denies, that in the said suit in chancery the court has ever made any final order, judgment, or decree whatever, as will more fully appear, by the record and proceedings in said suit, reference being thereunto made in answer for that purpose."

1. Because it is not responsive to any allegation in the complaint, and is redundant and irrelevant.

2. Because it is false, the defendant having set up the decree which he says has not been made in his answers.

3. Because it does not make any difference in this case whether such decree was made or not.

4. Because the same is sham.

5. Because the same is frivolous.

6. Because the same has been held bad on demurrer by this court in this cause.

7. Because the same is not in conformity with the statute.

And to strike out the following portion of the said amended answer:

"This defendant further answering alleges, that after the said suit in chancery had been put at issue, and while it was at issue, upon the said bill of complaint and answer, and after the defendant, David A. Secombe, and others, had purchased a large portion of the real property which was the subject-matter of the said suit in chancery, at the sheriff's sale as afore-mentioned, to wit, on or about the 23rd day of March, 1853, the said plaintiff, Steele, and Arnold W. Taylor aforesaid, both of whom were acquainted with the fact of the said sheriff's sale, conspired and colluded together for the purpose of defrauding this defendant and others who had purchased at said sheriff's sales."

1. Because the same has been held bad on demurrer to the answer of the defendant in this cause and by this court.

2. Because no fact is stated, showing how the suit in chancery affected the defendant in any manner, or in the least degree impaired his rights as purchaser at sheriff's sale.

3. Because, whether the plaintiff and Arnold W. Taylor conspired and colluded together for the purpose of defrauding the defendant or any other persons, is a question of law to be determined from facts, and the facts are illegally and improperly omitted.

4. Because the same is frivolous.

5. Because the same is not in conformity with the statute.

And to strike out the following portion of the said amended answer, viz:

Commencing on the sixth page thereof with the words "and the said plaintiff and Arnold W. Taylor so conspiring and colluding," &c., down to and including the word on the seventh page thereof, "agreed upon in said bond or agreement in writing."

1. Because the demurrer of the plaintiff, to precisely the same statements in the answer of the defendants, has been sustained by this court in this cause.

2. Because no fact is stated showing that the plaintiff and Arnold W. Taylor had not a perfect right to settle a suit in chancery to which they were the only parties in their own way, and that such settlement was not a praiseworthy rather than a fraudulent act.

3. Because it was not fraudulent, but wise and *fraudulent* in Taylor to withdraw an answer which, on its face, is unconscionable and weak, and which was held by this court to be insufficient even to procure a dissolution of the injunction upon him, and to allow a decree to go against him requiring him to do that which he was legally, equitably, and honorably bound to do.

4. Because the facts of the alleged subsequent agreement between Taylor and Steele are not stated so as to inform the plaintiff what he has to meet.

It is not stated when or where such alleged agreement was made, nor who were the parties to it, nor what were the terms of it, nor whether it was by parol or under seal, nor whether it was verbal or written, nor is any fact stated showing that it was ever intended by the parties to rescind or abandon their original bond or agreement, or showing that if they did so intend they ever made such an agreement as would, either in law or equity, have the effect to abandon and rescind a solemn covenant, signed, sealed, acknowledged, and recorded. On the contrary, all of the facts admitted and stated by the defendant show clearly, that so far from abandoning or rescinding the original agreement, Steele and Taylor adhered to it throughout, and finally complied with it.

5. Because the two conveyances referred to in the said portion of the said amended answer, instead of being made (therein falsely alleged by the defendant) to carry out and consummate the alleged subsequent agreement of March 23d, 1853, were, as is clearly apparent from the papers, made to carry out and consummate the bond or agree-

ment of January 17th, 1852, and with no other design or purpose whatever.

6. Because the said portion of the said amended answer is false upon its face, and, taken in connection with the conveyances to which it refers, is inconsistent with itself.

7. Because the same is sham.

8. Because the same is frivolous.

9. Because the same is not in conformity with the statute.

And to strike out the following part of the said amended answer:

"And this defendant further answering denies, that the plaintiff ever paid to the said Arnold W. Taylor the said sum of twenty-five thousand dollars, which was the purchase-money required to be paid by him for said real property, in and by the terms of the said bond, as he was required, or in any manner whatever, as is recited in the said deed, made by the said George Barstow to the plaintiff, and as is alleged in the complaint in this action."

1. Because the same is false, the defendant having admitted the payment of the $1,000 on the execution of the bond, and averred the payment of the remainder of the money into this court.

2. Because there is no fact alleged showing that the original contract between Taylor and Steele was not a bona fide sale by the former to the latter, and a bona fide purchase by the latter from the former; on the contrary, it clearly appears that the contract was entirely fair and legal. Such being the case, either party had a perfect right to release the other from compliance with the whole or any part of the terms of the contract.

No fact is stated showing how the defendant could have been affected by such release. He had no right to the land, because it was sold to the plaintiff long before his (defendant's) title accrued. He had no right to the money, because he never attached or enjoined it as a creditor of the vendor. Certainly he did not buy it at the sheriff's sale. Even then if the purchase-money were not paid, as is falsely pretended, the title to the land in the plaintiff is good; no fact appearing to show that Taylor had not a legal right to give it to him if he pleased; and if he did not please, and the money is yet due to him, let him collect it.

3. Because the same is sham.

4. Because the same is frivolous.

5. Because the same is not in conformity with the statute.

You will also please take notice, that the complaina*nt*, answer and demurrer, and the decision of the court upon said demurrer, on file in the office of the clerk of the said court, and the amended answer of the defendant, D. A. Secombe, a copy whereof has been served upon us, will be read in support of said motion.

Yours, resp'ly,

RICE, HOLLINSHEAD & BECKER,
Att'ys for Plaintiff.

To Messrs. North & Secombe, *Attorneys for Def't.*
St. Paul, January 17, 1855.

In the District Court in and for the 2d Judicial District and County of Ramsey, in the Territory of Minnesota.

FRANKLIN STEELE
against
DAVID A. SECOMBE and others.

Demurrer to portions of amended Answer.

The plaintiff in the above entitled action demurs to the portions of the new matter in the amended answer of David A. Secombe, hereinafter specified, for the insufficiency thereof, and for grounds of demurrer thereto states, as is hereinafter particularly stated. 1st, the plaintiff demurs to all of that portion of new matter contained in the said amended answer, commencing on the first page thereof with the words:

That the said defendant claims to be, and is the owner of one undivided "half," &c., down to and including the word on the second page thereof, "said property so conveyed by the said sheriff unto the said John W. North as aforementioned;" because the claim of the plaintiff to the land in controversy is founded upon the bond of Arnold W. Taylor, dated on the 17th day of January, 1852, duly recorded in the office of the register of deeds of the county of Ramsey, in the Territory of Minnesota, on the 19th day of January, 1852, and is not, and cannot be defeated, impaired, or in any manner affected by the purchase made by John W. North at sheriff's sale, made by virtue of an execution issued upon a judgment against Arnold W. Taylor, rendered and docketed on the 28th day of January, 1853; because the bond mentioned and specified in the plaintiff's complaint was, by the express statute of the Territory of Minnesota, notice to, and took precedence of, any subsequent purchase or purchases, and operated as a lien upon the land therein described, according to its import and meaning; because the demurrer of the plaintiff to precisely the statement contained in the answer of the defendant has been sustained by this court; and because the said portion of the new matter contained in the said amended answer does not, for the said reasons, constitute a defence to the complaint of the plaintiff in this action, and is not in conformity with the statute.

2. The plaintiff demurs to all of that portion of the new matter contained in the said amended answer, commencing on the third page thereof with the words, "and this defendant further answering says, that after the said violation of the said bond on the part of the said plaintiff, and after the said refusal of the said Taylor," &c., down to *in* including the words on the sixth page thereof, "the printed paper-book hereunto annexed, which for that purpose is here referred to and made a part of this answer," and to the printed paper-book therein referred to and made part of the said new matter; because the title of the plaintiff to the land in controversy is not founded upon the suit in chancery referred to in the said portion of the said amended answer,

nor upon any proceeding therein, but is founded upon the said bond of Arnold W. Taylor, made, executed, and recorded long before the said suit in chancery was commenced, and the said suit in chancery, nor any proceeding therein, whether regular or irregular, are not any defence against the complaint of the plaintiff in this action; because the said suit in chancery has not any bearing upon or relation to the defendant or his alleged interest in the land in controversy, he not being a party thereto, and the same not affecting any person but the parties litigant, Franklin Steele, complainant, and Arnold W. Taylor, defendant; because there is not a single fact contained in the said portion of the said amended answer defeating, impairing, or in any manner affecting the title of the plaintiff to the land in controversy as set forth in his complaint, nor in any way sustaining the claim of the defendant thereto; and the said portion of the said amended answer does not constitute a defence of the claim of the plaintiff in this action, and has not any bearing whatever upon it; because the said suit in chancery is fully ended and determined, and the decree therein entered, complied with and satisfied by the complainant and defendant in the said suit, the proper and only parties thereto; and the determination thereto, instead of defeating or impairing the claim of the plaintiff in this action, (if it has any bearing upon such claim at all,) strengthens and supports it; and because the said portion of the said new matter contained in the said amended answer does not, for the said reasons, constitute a defence to the complainant of the plaintiff, and is not in conformity with the statute.

3rd. The plaintiff demurs to all of that portion of the said amended answer commencing on the sixth page thereof with the words, "that since the making of the order of court," &c., down to and including the words on the seventh page thereof, "issue on the said bill of complaint and answer."

Because it appears from the record of the said suit, as set out by the defendant, that the answer therein was withdrawn, and a decree by consent entered in favor of the complainant.

And because, even if the said suit were pending and undetermined, as claimed by the defendant, it, in no respects, conflicts with the claim of the plaintiff in this action, and in no respects shows a title or interest in the defendant to the land in controversy, and does not, therefore, constitute a defence, and is not in conformity with the statute.

RICE, HOLLINSHEAD & BECKER,
Attorneys for Plaintiff.

January 17, 1855.

Endorsed: In the district court in and for the 2d judicial district and county of Ramsey, in the Territory of Minnesota—Franklin Steele against David A. Secombe and others—Demurrer—January 18, 1855—due service of the within is hereby admitted—North and Secombe, attys. for def'ts—Filed May 1st, 1855—Geo. W. Prescott, clerk—Rice, Hollinshead and Becker, pl'ffs attys.

Stipulation respecting motion to strike out, and Demurrer.

In the District Court in and for the 2d Judicial District and County of Ramsey, in the Territory of Minnesota.

FRANKLIN STEELE
against
DAVID A. SECOMBE and others.

It is hereby stipulated and agreed by and between the undersigned attorneys for the plaintiff and defendants in the above entitled action, that the demurrer to portions of the amended answer of David A. Secombe, a defendant therein, and the motion to strike out portions of said amended answer, shall be applicable to all of the other defendants in the said action, who here appear therein, as fully and effectually as if the said amended answer had been filed and served in the case of each of said defendants; and, that the same order or judgment may be entered in the case of each of the other of said defendants, as if entered in the case of the said defendant, D. A. Secombe, upon said demurrer or motion.

NORTH & SECOMBE,
Attys. for Defendants.
RICE, HOLLINSHEAD & BECKER,
January 18, 1855. *Attys. for Plaintiffs.*

Endorsed: In the district court in and for the 2d judicial district and county of Ramsey, in the Territory of Minnesota—Franklin Steele against David A. Secombe and others—Stipulation—Filed May 1, 1855, George W. Prescott, clerk.

Order on motion to strike out.

In the District Court in and for the 2d Judicial District and county of Ramsey, in the Territory of Minnesota.

FRANKLIN STEELE
against
DAVID A. SECOMBE and others.

This action came on to be heard, on motion of plaintiff's counsel to strike out portions of the amended answer of David A. Secombe, one of the defendants therein, on the twenty-sixth day of January, 1855, and, after hearing Messrs. Rice, Hollinshead and Becker, of *of* counsel for the plaintiff, in support of said motion, and D. A. Secombe, esq., of counsel for the defendant, in opposition thereto, and the court having duly considered the matter, it is hereby ordered, that the said motion be allowed, as to all of the portions of said amended answer, in the notice of motion recited, and that the defendants pay to the plaintiff.

M. SHERBURNE,
Dated May 4th, 1855. *Judge.*

Endorsed:

Territory of Minnesota, district court, 2d district, county of Ramsey—Franklin Steele against David A. Secombe, and others—Order sustain-

ing motion to strike out portions of the amended answer—Due service of a copy of the within on me this 19th day of May, 1855, is hereby admitted—D. A. Secombe, attys. for defts.

In the District Court in and for the 2d Judicial district and county of Ramsey, in the Territory of Minnesota.

FRANKLIN STEELE
against,
JAMES H. TRADER, ORRIN W. RICE, JOHN W. NORTH, J. Ryan, William L. Larned, Roswell P. Russell, William H. Cole, James B. Gilbert, Charles F. Stimson, Sumner W. Farnham, Benjamin Parker, Z. E. B. Nash, Samuel Estes, John Rollins, E. Snell, W. D. Gardner, J. M. Durnam, Eleanor King, William R. Marshall, John Orth, James M'Cann, Charles T. Stearns, Herman Jenkins, jr., Edward Dickson, Henry S. Plummer, E. Lippincott, M. P. Wilson, J. C. Lawrence, Richard S. Rust, Charles Brown, William A. Cheever, Rufus Ingersoll, William Hanson, D. A. Secombe, William D. Gardner, George L. Loomis, W. H. Townsend, J. La Croix, Abigail B. Fish, William G. Develin, George B. Button, Moses W. Getchell, Moses Munson, Charlotte Brown, Orville W. Stoughton, Jonathan Estes, Samuel L. Getchell, C. M. Jenkins, Eli C. Jones, George E. H. Day, E. W. Merrill, S. M. Tracy, Joel Munson, and John Richardson.

This action came on to be heard on the 14th day of February, 1855, upon the demurrer of the plaintiff to the amended answer of the defendant, D. A. Secombe, and on reading and filing the complaint of the plaintiff therein, and the amended answer of David A. Secombe, and on reading the stipulations of Rice, Hollinshead and Becker, the plaintiff's attorneys, and North and Secombe, the defendant's attorneys, that the demurrer to said amended answer should be applicable to all of the other defendants in the said action, who had appeared therein, as fully and effectually as if said amended answer had been filed and served in the case of each of said defendants, and that the same order or judgment might be entered in the case of each of the other of said defendants, as should be entered in the case of the said defendant David A. Secombe, upon the said demurrer, and after hearing Messrs. Rice, Hollinshead and Becker, in support of said demurrer on behalf of the plaintiff, and David A. Secombe, esq., in opposition thereto, and *and* the court having duly considered the same, it is hereby ordered, adjudged and decreed, that the said demurrer be sustained, and that the title to the real estate conveyed to the plaintiff by Arnold W. Taylor by warrantee deed, dated on the 24th day of May, 1853, through his duly authorized attorney, George Barstow, more particularly described, as follows, to wit: "All the following described pieces or par-

cels of land, situate, lying, and being in the county of Ramsey, and Territory of Minnesota, being the water-power, mills, and village or town lots, and other property at St. Anthony Falls, described in the deeds of conveyance, from the party of the second part, to the party of the first part, excepting so much thereof as was sold and conveyed, jointly by the said Franklin Steele, Ard Godfry, and the said Arnold W. Taylor, party of the first part, and excepting "Hennepin" or the lower "Island," and "Boom Island," free and discharged from all liens and incumbrances created, suffered or permitted by the said party of the second part, or his assigns, subsequent to the date of the bond or agreement herein before recited.

"The said property being more particularly and accurately described as follows, viz: The one undivided half of the town of St. Anthony Falls, lying upon the eastern shore of the Mississippi river, (a plot or plan of which is annexed to and made a part of this deed,) which said town contains about two hundred and fifty acres of land, more or less, and is embraced in certain patents granted by the Government of the United States to Franklin Steele, the party of the second part, and certain deeds duly recorded in the said county of Ramsey, from Henry H. Sibly and wife, and Calvin A. Tuttle and wife, to the said Franklin Steele, party of the second part, excepting and reserving the islands lying in the Mississippi river, and designated upon the plot hereunto annexed as Hennepin, Boom and Nicolett islands, and excepting and reserving all lots in said town plot, which have been sold and conveyed by the said Arnold W. Taylor, Franklin Steele, Ard Godfry, prior to the first day of January, 1852, not exceeding two hundred and sixty lots; also, the one undivided half of a tract of land containing about four acres, more or less, formerly owned by Pierre Bottineau, and designated upon the annexed map as Boom Landing; also, an undivided half of the Boom in the Mississippi river, opposite to the said Boom Landing; also, the one undivided half of all the water privileges belonging to the said premises; *and the one undivided half of all the water privileges belonging to the said premises;* and the one undivided half of the dam erected upon said premises, extending from the eastern shore of the Mississippi river to Hennepin and Nicolett island; also, the one undivided half of all sawmills now erected on said dam; and of the entire water front and water privileges upon the east side of Nicolett island, and of so much of said island as may be flowed by the water from the said dam, or of any dam which may be hereafter erected on said premises, and the right of flowing the same, (being the same property formerly purchased of the said Franklin Steele by the said Taylor,") be, and the same is hereby, determined, pursuant to the prayer contained in the plaintiff's complaint, to be in the said plaintiff; and the said defendants are hereby required to release their said adverse claims to estates, or interest therein to the plaintiff, or in case of their failure, or refuse so to do, this order, judgment, or decree shall stand, and be recorded in the place of such release; and the said defendants, and each and every of them, are hereby perpetually enjoined

and restrained from asserting or making such adverse claims to the said property, or intermeddling in any manner with the title thereto.

And it is further ordered, adjudged, and decreed, that the defendants pay to the plaintiffs the costs of this action.

M. SHERBURNE, *Judge.*

The foregoing endorsed: "Territory of Minnesota, district court, second district, county of Ramsey—Franklin Steele against James H. Trader and others—Decree—Filed May 18, 1855—Sherwood Hough, dept. clerk—Rice, Hollinshead & Becker, plaintiff's attorneys."

TERRITORY OF MINNESOTA,
District Court, second district, county of Ramsey.

FRANKLIN STEELE, plaintiff,
against
JAMES H. TRADER, ORRIN W. RICE, JOHN W. NORTH, J. Ryan, William L. Larned, Roswell P. Russell, William H. Cole, James B. Gilbert, Charles F. Stimson, Sumner W. Farnham, Benjamin Parker, Z. E. B. Nash, Samuel Estes, John Rollins, E. Snell, W. D. Gardner, J. M. Durnam, Eleanor King, William R. Marshall, John Orth, James McCan, Charles T. Stearns, Herman Jenkins, jr., Edward Dickson, Henry S. Plummer, E. Lippincott, M. P. Wilson, J. C. Lawrence, Richard L. Rust, Charles Brown, William A. Cheever, Rufus Ingersoll, William Hanson, D. A. Secombe, William D. Gardner, George D. Davis, W. H. Townsend, J. La Croix, Abigail B. Fish, William G. Develin, George B. Dutton, Moses W. Getchell, Moses Munson, Charlotte Brown, Orville W. Stoughton, Jonathan Estes, Samuel L. Getchell, C. M. Jenkins, Eli C. Jones, George E. H. Day, E. W. Morrill, S. W. Tracy, Joel Munson, and John Richardson, defendants.

It having been ordered, adjudged, and decreed by the court, that the demurrer of the plaintiff to the amended answer of the defendants be sustained, and that the title to the real estate conveyed to the plaintiff by Arnold W. Taylor, by warrantee deed, dated on the 24th day of May, 1853, through his duly authorized attorney, George Barstow, more particularly described as follows, to wit, all the following described pieces or parcels of land, situate, lying, and being in the county of Ramsey and Territory of Minnesota, being the water-power, mills, and village or town lots, and other property at St. Anthony Falls, as described in the deeds of conveyance from the party of the second part to the party of the first part, excepting so much thereof as was sold and conveyed jointly by the said Franklin Steele, Ard Godfry and the said

Arnold W. Taylor, party of the first part, and excepting "Hennepin," or the lower island and Boom Island, free and discharged of all liens and incumbrances created, suffered, or permitted by the said party of the second part, or his assigns, subsequent to the date of the bond or agreement hereinbefore cited, the said property being more particularly and accurately described as follows, viz: "The one undivided half of the town of St. Anthony Falls, lying upon the eastern shore of the Mississippi river, (a plat or plan of which is annexed to and made a part of this deed,) which said town contains about two hundred and fifty acres of land, more or less, and is embraced in certain patents granted by the Government of the United States to Franklin Steele, party of the second part, and certain deeds duly recorded in the said county of Ramsey from Henry H. Sibly and wife, and Calvin A. Tuttle and wife, to the said Franklin Steele, party of the second part, excepting and reserving the three islands lying in *in* the Mississippi river, and designated upon the plot hereunto annexed as Hennepin, Boom, and Nicolett islands, and excepting and reserving all lots in said town plot which have been sold and conveyed by the said Arnold W. Taylor, Franklin Steele, and Ard Godfry, prior to the first day of January, 1852, not excepting two hundred and sixty lots. Also, the one undivided half of a tract of land, containing about four acres, more or less, formerly owned by Pierre Bottineau, and designated upon the annexed map as 'Boom Landing;' also one undivided half of the Boom in the Mississippi river opposite to the said Boom Landing. Also the one undivided half of all the water privileges belonging to the said premises, and the one undivided half of the dam erected upon said premises, excepting from the eastern shore of the Mississippi river to Hennepin and Nicolett islands. Also, the one undivided half of all sawmills now erected on said dam, and of the entire water-front and water-privileges upon the east side of Nicolett Island, and of so much of said island as may be flowed by the water from the said dam, or of any dam which may be hereafter erected on said premises, and the right of flowing the same, (being the same property formerly purchased of the said Franklin Steele by the said Taylor,) be, and the same is hereby determined, pursuant to the prayer contained in the plaintiffs' complaint, to be in the said plaintiffs; and the said defendants are hereby required to release their said adverse claims to estates or interest therein to the plaintiff, or in case of their failure or refusal to do so, this order, judgment, or decree shall stand and be recorded in the place of such release, and the said defendants, and each and every of them, are hereby perpetually enjoined and restrained from asserting or making such adverse claim to the said property, or intermeddling in any manner with the title thereto."

And also that "the defendants pay to the plaintiff the costs of this action.

Therefore, said order, judgment, or decree is hereby entered as the judgment of this court.

And it is further adjudged, on motion of Rice, Hollinshead & Becker,

plaintiffs' attorneys, that the plaintiffs above named recover of the following named defendants, who appeared and defended this action, to wit: David A. Secombe, John Rollins, William H. Cole, Sumner W. Farnham, Charles T. Stimson, Joseph C. Lawrence, James McCann, William H. Townsend, Eli C. Jones, Eleanor F. King, Samuel Estes, Geo. B. Dutton, Moses G. Getchell, Z. E. B. Nash, Wm. D. Gardner, J. La Croix, Benjamin Parker, and Orville W. Stoughton, the sum of one hundred and seven dollars, costs of their action.

Dated May 31st, 1855.

GEO. W. PRESCOTT, *Clerk.*

Statement for Judgment.

For all proceedings before notice of trial - - -	$12 00
" " " subsequent to " - - -	7 00
" trial of issue of law - - - - - - -	15 00
" clerk's fees - - - - - - - -	16 90
" sheriff's " - - - - - - - -	56 10
	$107 00

TERRITORY OF MINNESOTA,
District Court, 2d district, County of Ramsey, ss:

I, Geo. W. Prescott, clerk of the above entitled court, hereby certify that the foregoing are true copies of the original "demurrer," "opinion of court upon demurrer," amended answer of David A. Secombe, and "stipulation of attorneys, also of notice of motion to strike out portions of amended answer," "demurrer to portions of amended answer," "stipulation respecting motion to strike out, and demurrer," order granting motion, "decree of court," and "judgment of court," with the several endorsements thereon noticed, which are on file in the cause therein entitled of Franklin Steele against James H. Trader and others, in said clerk's office; said papers constituting with others the judgment-roll in said cause.

In testimony whereof, I have hereunto set my hand and affixed the [SEAL.] seal of said court, at St. Paul, in said county, this 7th day of January, A. D. 1856.

GEO. W. PRESCOTT,
Clerk.

TERRITORY OF MINNESOTA,
District Court, 2d district, County of Ramsey.

FRANKLIN STEELE
against
DAVID A. SECOMBE and others.

Opinion.

There is a motion in this case to strike out portions of the amended answer and demurrer to the remainder. Most of the reasons which I

gave for sustaining the demurrer the former answers apply with equal force to the present; the plaintiff relies for his title upon his bond and deeds made in the pursuance of it. There is but one material issue which can be made in the case, and that is, did the plaintiff so fail to perform his part of the conditions of the bond as to forfeit all legal and equitable rights under it? If he did, the defendants have a right by virtue of the sales upon execution; if he did not, the defendants have no claim whatever. If the facts were of such a character that a court of equity would have compelled a specific performance, Taylor had a right to make the conveyance voluntarily, and without the intervention of a court.

There is a general charge of fraud between Taylor and Steele in the making of the conveyances complained of; but if Taylor was bound to convey, the charge of fraud can have no force whatever. The complaint shows that Steele had a lien upon the premises, and that Taylor was bound to convey them.

The defendants must by their answer show that Steele lost that lien before they can show any title in themselves averse to his. Have they done this? The only part of the answer designed to set up this fact is on the third page, and is the second paragraph which the plaintiff asks to have stricken out in this; the answer alleges that "the said plaintiff utterly failed to perform the conditions of the said bond, &c."

I do not think this sufficient. What is the meaning of it? All that can be legitimately inferred from the language is, that the plaintiff did not perform all the conditions. If there had been twenty conditions, and they had all been performed but one, still this answer would be true. The defence should allege wherein the plaintiff failed to perform. The word "utterly" adds nothing to the statement, and if stricken out, the answer would remain quite as perfect as before. If the intention was to aver that none of the conditions had been performed, the answer should have alleged that "the plaintiff utterly failed to perform" either or any of "the conditions of the bond" as it stands; the plaintiff has no notice of what is intended. This portion of the answer, if properly drawn, is material, and really presents the only material issue in the case. I would for that reason deny the motion to strike it out, if I could do so consistently with legal rules, but my opinion is that I cannot.

The party whose case depends upon the breach of conditions in a bond or contract, should distinctly and fully set them up; a general statement that the opposite party has not performed his agreement or promises, is bad on demurrer, though aided by a verdict.

Smith vs. Walker, 1 Wash. 135.

1 Chitty's Pleading, 294, and cases cited.

If this portion of the answer is stricken out, there is nothing left of it. The record of cause in equity was introduced, I suppose, to show that the issues in this case were pending in another court, the same parties. Such was my own opinion, but a majority of the Supreme

Court has decided that the defendants were not proper and legal parties to that action. I am, of course, controlled by that opinion. The whole printed book, then, which is annexed, can have no effect or force in the disposition of the merits of this case. Indeed, that portion of the answer to which I first referred being stricken out, as it must be, for the reasons given, all the remainder of it becomes immaterial.

If the defendants will set up distinctly the breaches by which, as they suppose, Steele lost his lien by virtue of the bond, and will also set up the judgment, sale, and deeds, by which they suppose they have a title to the premises, the whole matter will be in issue. The only question in such case, which can with any reason be litigated by the parties in law or fact, is, whether Steele lost his lien upon the land in consequence of his failure to deposit the money in the manner stipulated? The whole matter has been before me so often, that I think it not improper to say, that however perfect the pleadings may be, my opinion is that Steele never lost his lien upon the property, and that Taylor was bound to convey to him. The only remedy of the defendants, as it seems to me, was upon the purchase-money; there would have been no difficulty in their obtaining it by a separate bill, and my judgment is, that having been admitted without objection, and after due notice, as parties in the former suit, they should have been retained and allowed to receive their portion of the money. This has been decided against, and thereon, as it appears to me, without remedy. The main question is not before me, nor am I called upon for this opinion; but having several times gone over and examined the whole question, I have not the remotest doubt of what the result must be in the end, and I throw out the intimation, that the parties may act upon it or not, as they shall be advised.

The counsel for the defendant urges, that the claim or lien of the execution creditors takes precedence of a prior lien created by a bond for sale, and with commendable industry cites a number of authorities to sustain this position; but this question is settled the statute of this Territory. (See chapter 47, sec. 3, R. S.) The decisions were in cases when no such statutes existed.

The demurrer must be sustained and the motion granted.

Ordered accordingly.

M. SHERBURNE.

March 20, 1855.

TERRITORY OF MINNESOTA,
District Court, 2d district, county of Ramsey.

I, Geo. W. Prescott, clerk of the above-entitled court, certify that the foregoing is a true copy of an opinion of court, on file in said clerk's office, in the cause therein entitled.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, this 7th day of January, A. D. 1856.

[SEAL.]

GEO. W. PRESCOTT, *Clerk.*

TERRITORY OF MINNESOTA,
District Court, 2d district, county of Ramsey.

FRANKLIN STEELE
against
DAVID A. SECOMBE and others.

GENTLEMEN: You will please take notice, that on Wednesday, the 11th day of July inst., at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard before the Hon. M. Sherburne, judge of said court, at his chambers in the city of St. Paul, in said county, a motion will be made on the part of the defendants in the above-entitled action, for an order of court to open the judgment in said action, heretofore entered, and to give to the said defendants leave to make and file in said action a further amended answer.

D. A. SECOMBE,
Att'ys for Def'ts.

To RICE, HOLLINSHEAD & BECKER,
Attorneys for Plaintiffs.

Dated July 2d, 1855.

Endorsed: In district court, county of Ramsey—Franklin Steele against David A. Secombe and others—Notice of motion—Form of a copy of within notices of motion is hereby acknowledged—July 3, 1855—Hollinshead & Becker, att'ys for plts.—Filed August 6th, 1855—Geo. W. Prescott, clerk—D. A. Secombe, att'ys for deft's.

TERRITORY OF MINNESOTA,
District court, 2d district, county of Ramsey.

FRANKLIN STEELE
against
DAVID A. SECOMBE and others.

This is a motion on the part of the defendants for an order of court to open the judgment heretofore entered in this action, and to give the defendants leave to make and file a further amended answer.

There is no affidavit, and the only paper used in the motion is the notice of motion; the judgment in the cause was rendered several months since; not a single reason appears upon the papers why it should not be opened. I am not aware that a judgment was ever opened by a court without some cause therefor appearing of record, and no reason occurs to me why this case should be made an exception. The motion is denied, with ten dollars costs to the plaintiff.

M. SHERBURNE, *Judge.*

Dated August 1, 1855.

Endorsed: District court, 2d district, county of Ramsey—Franklin Steele against D. A. Secombe and others—Decision of court upon motion to open judgment—Filed Aug. 1, 1855—Geo. W. Prescott, clerk.

TERRITORY OF MINNESOTA,
District Court, 2d dist., county of Ramsey.

FRANKLIN STEELE
against
D. A. SECOMBE and others.

This cause having been argued and submitted upon the motion to open the judgment heretofore entered therein, and for leave to make and file a further amended answer—

Ordered, That the said motion be, and the same hereby is, denied, with ten dollars costs to the plaintiff.

M. SHERBURNE, *Judge.*

Dated August 1, 1855.

Endorsed: District court, 2d district, county of Ramsey—Franklin Steele against D. A. Secombe and others—Order denying motion to open judgment, &c.—Filed August 1, 1855—Geo. W. Prescott, clerk.

Notice of Appeal.

MINNESOTA TERRITORY,
District court, 2d district, county of Ramsey.

FRANKLIN STEELE
against
DAVID A. SECOMBE and others.

To Franklin Steele, the above named plaintiff, and George W. Prescott, Esq., clerk of said court.

You will please take notice that David A. Secombe, Sumner W. Farnham, Charles T. Stimson, Samued Estes, Benjamin Parker, John Rollins, Eli C. Jones, E. F. King, J. La Croix, Orville W. Stoughton, Moses W. Getchell, and George B. Dutton, defendants in the above entitled action, appeal to the supreme court of said Territory, from the judgment heretofore rendered in said action in the said district court.

Also take notice, that the undertaking for said appeal required by statute is on file in the action.

Dated Oct. 15, 1855.

D. A. SECOMBE,
Att'ys for said Def'ts.

Endorsed: In district court, county of Ramsey—Franklin Steele against David A. Secombe and others—Notice of appeal—Due service of copy of within notice is hereby admitted—Dated Oct. 15, 1855—Hollinshead & Becker, att'ys for pl'ffs—Filed Oct. 15, 1855—Geo. W. Prescott, clerk—D. A. Secombe, att'ys for def'ts.

TERRITORY OF MINNESOTA,
District Court, 2d district, county of Ramsey.

I Geo. W. Prescott, clerk of said court above entitled, certify the foregoing to be true copies of the original "notice of motion," "de-

cision of court upon motion to open judgment," "order denying motion to open judgment," and "notice of appeal," and of the several endorsements thereon, which are on file in the cause therein entitled in said clerk's office.

In testimony whereof, I have hereunto set my hand and [SEAL.] affixed the seal of said court, at St. Paul, in said county, this 7th day of January, A. D. 1856.

GEO. W. PRESCOTT, *Clerk.*

Endorsed: Supreme court, Territory of Minnesota—Franklin Steele, resp't, against James H. Trader and others, appellants—Appeal papers from district court, Ramsey county—Filed in Supreme court, January 15, 1856—Geo. W. Prescott, clerk—550 folios—D. A. Secombe, att'ys for app'ts.

SUPREME COURT,
Territory of Minnesota, ss:

I, George W. Prescott, clerk of the supreme court above entitled, certify that I have carefully compared the foregoing with the "appeal papers from the district court of Ramsey county," brought from said district court to this court by appeal, in the action in this court entitled "Franklin Steele, respondent, against James H. Trader and others, appellants," and that the same is a true and complete transcript of all said appeal papers filed and used in said cause in said supreme court.

In testimony whereof, I have hereunto set my hand and [SEAL.] affixed the seal of said supreme court, this 8th day of May, A. D. 1856.

GEORGE W. PRESCOTT, *Clerk.*

Appeal from the District Court, 2nd district, to the Supreme Court.

In the Supreme Court of Minnesota Territory.

FRAKLIN STEELE, respondent,
against
JAMES H. TRADER and others, appellants.

Points and Authorities submitted by Franklin Steele, respondent.

1. The title-bond from Arnold W. Taylor to Franklin Steele was a lien upon the land in question, from the time of its record, and as such was unaffected by the subsequent purchases of the appellants. Sections 1, 3, Revised Statutes, p. 215.

2. That such bond was a lien according to its tenor and effect. Ibid., sec. 3, p. 215.

3. That the appellants do not set up any facts in the answer, questioning the validity of the said lien or estate for which the same became a lien.

4. That the title of Steele was fully consummated, upon the execution of the deeds by Taylor to himself.

5. That the material fact, the payment of the consideration money, upon which Steele was entitled to his deed, is not denied.

6. That the deeds, in their tenor and effect, are in conformity with the said bond.

7. That the complaint, in this action of Steele, sets up facts upon which a court of equity would have decreed a performance, and the said facts are not traversed and put in issue by the answers of the appellants.

8. That the said Arnold W. Taylor had no estate in the said land at the time of the sheriff's sales, under which the appellants claim, and that, therefore, the said appellants show no title.

9. That the amended answer of the appellants presented no material issue.

10. That the decree entered in favor of Steele, in the case of Steele agst. Taylor, cannot be questioned by the appellants, and that the said appellants had no right to intervene therein.

Authorities.

Revised Statutes, sec. 1, 2, chap. 47, p. 215.
Piles v. Bouldin, 11 Wheat. 325.
Hurley v. Morgan, 1 Dev. and Bartlet's R. 425.
Story's Equity Jurisprudence, § 790, (4th Ed.,) 2 vol., pp. 115, 116.
Seton v. Slade, 7 Vesey, 264, 274.
Sanford v. McLean, 3 Paige, 123.
Bartlett v. Gale, 4 Paige, 503.
1 Monell's Pr. 566.
Carson v. Pearl, 4 J. J. Marsh, 92.
Eppes v. Smith, 4 Munf. 466.
Van Sanvord's Pleading, 273, 284, 291.
Sayles v. Woodson, 6 How. Pr. R. 84.
Buddington v. Davis, 6 How. Pr. 401.
Daniel's Ch. Pr. 1214, Barbour's Ch. Pr. 373.
Wood v. White, 4 Mylne & Craig, 460.
Tasker v. Small, Ibid., vol. 3, p. 63.
Hall v. Lewis, 3 Young & Collyer Equi. Exc. R. 191.
White v. Wood, 4 Mylne & Craig, 460.
Dan'l Ch. Pr. 247.
vs. Walford, 4 Russ. 372.
Netthrup v. Holgate, 1 Collyer, 303, and cases there cited
Dan'l Ch. Pr. 328; Story's Equi. Pl. § 342.
Note: Foster v. Deacon, 6 Madd. R. 59.
2 Mitf. Eq. Pl. by Jeremy, 68.
Sedgwick v. Cleveland, 7 Paige, 290.
Deas v. Thorne, 3 Johns. 544.
Gaskell v. Durdin, 2 Ball & Beatty, 167.
Murray v. Libburn, 2 Johns. Chancery, 445.
Hoxie v. Carr, 1 Sumner, 173.
1 Smith Ch. Pr. 423; Mitford's Pl., note on parties, 397-'8; Bishop of Winchester v. Beaver, 3 Ves. 316.

Metcalf v. Pulvertuf, 2 V. & B. 205–'7.

Decision in the case of Steele v. Taylor, supreme court M. T., January 15, 1855, and opinion of J. Chatfield.

Vansantoord's Pl. 201; McMurray v. Gifford, 5 How. Pr. R. 14.

1 Chitty's Pl. 294, and cases cited.

Smith v. Walker, 1 Wash. 135.

SUPREME COURT, *Territory of Minnesota, ss:*

I, Geo. W. Prescott, clerk of said supreme court, certify the foregoing to be a true copy of the "points and authorities of respondent," endorsed as hereon endorsed, filed in said court, in the cause therein entitled, on the 14th day of January, A. D. 1856, and now on file in said court.

Witness my hand and the seal of said court, this 8th day of
[L. S.] May, A. D. 1856. G. W. PRESCOTT, *Clerk.*

No. 207, supreme court M. T.—Steele, respondent, vs. Trader et al., appellants—Appeal from dist. court, 2d dist., to supreme court—Points and authorities of respondent—Service admitted, Jan. 14, 1856—D. A. Secombe reserving right to strike from calendar—Hollinshead, Becker, H. J. Horn, for respondents.

In the Supreme Court of Minnesota Territory.

FRANKLIN STEELE, respondent,
against
D. A. SECOMBE and others, appellants.

Points on the part of Appellants for reversal of judgment.

I. The court below erred in granting the motion on part of plaintiff below to strike out portions of amended answer of D. A. Secombe, and in striking out the same, for the following reasons, to wit:

1st. The court erred in striking out the first portion of said answer referred to and quoted in the notice of said motion, for the reason that the said portion of the said answer was directly responsive to a distinct allegation in the plaintiff's complaint, and was not objectionable in matter of form.

2nd. The court erred in striking out the second portion of said answer quoted as aforementioned, for the reason that the said portion of the said answer was a tender to the plaintiff of a material issue which plaintiff should have made or tendered in his complaint, and that the same is in conformity with the requirements of the statute in regard to pleading performance of conditions precedent.

3d. The court erred in striking out the third portion of the said answer quoted as aforementioned, for the same reason as set forth in the first subdivision above.

4th. The court erred in striking out the fourth portion of the said answer quoted as aforementioned, for the reason that the same is directly responsive to a recital in the deeds which are made a part of the plaintiff's complaint, and the same is not objectionable in form.

5th. The court erred in striking out the fifth portion of the said answer quoted as aforementioned, for the same reason as quoted in the last subdivision.

6th. The court erred in striking out the sixth portion of the said answer quoted as aforementioned, for the reason that the said portion of the said answer contains an allegation of facts in avoidance of the allegations of the plaintiff's complaint, and is not objectionable.

7th. The court erred in striking out the seventh portion of the said answer quoted as aforementioned, for the same reason mentioned in the last subdivision.

8th. The court erred in striking out the eighth portion of the said answer quoted as aforementioned, for the reason that the same contained a direct denial of a material allegation of the complaint, and forms a material issue in the cause.

II. The court below erred in the judgment on the demurrer in this action, as follows, to wit:

1st. The bond set up in the complaint of the plaintiff was only an equitable title.

2nd. The said bond and a record thereof was a lien on the real estate therein described only "according to its import and meaning."

3rd. The bond being only an equitable title, the lien was only an equitable lien.

4th. The legal title, after the vesting of the equitable title, still remained in Taylor.

5th. The legal title could pass from Taylor to Steele only by voluntary deed, or by involuntary decree of a court of equity.

6th. The legal title could pass from Taylor to Steele by voluntary deed only when that legal title was in Taylor.

7th. The legal title could pass from Taylor to Steele by compulsory decree of court only when the legal title was in Taylor.

8th. The possessor of the equitable title could acquire the legal title in no other way than by the voluntary deed of the possessor of the legal title, or by compulsory decree of court against the possessor of the legal title.

9th. The sheriff's sale by operation of law passed the legal title to the sheriff's vendees.

10th. The title acquired by the sheriff's vendees was subject of course to the equitable title of the bond, but only as it then existed and could be enforced by a decree.

11th. After the sheriff's sale Taylor lost all control of the real estate, both equitable and legal; he could no longer voluntarily deed, waive, or release anything; nor could he be the proper party to a decree of court for a specific performance of the contract, or in other to pass the legal title.

12th. The sheriff's vendees having the legal title could never be dispossessed of the same involuntarily, otherwise than by being parties defendant to a suit in equity, (or under our present statute a suit in

the nature of a suit in equity,) to enforce a specific performance of the bond or equitable deed.

13th. This action is not an action to acquire a title on the part of the plaintiff, or in other words to pass the title from the defendants to the plaintiff, nor in the nature of such an action.

14th. This action, from its nature and object, presumes the plaintiff to have acquired a perfect title previous to the institution of the same.

15th. It appears by the answer in this action, that the defendants herein have been properly in court as parties defendant in a suit in equity, instituted for the express purpose of enforcing the specific performance of the bond or equitable deed under which the plaintiff herein claims, and in which suit in equity the plaintiff herein was complainant.

16th. It appears that the court in the suit in equity above mentioned had full and complete jurisdiction of the persons of the defendants and of the subject-matter in the same.

17th. It appears that the complainant in said suit in equity, on his own motion, dismissed the defendants therein, the appellants in this action, without a hearing on the merits of their case and against their will.

18th. It appears that the defendants in said suit in equity appealed from the order of court dismissing them as defendants, which said appeal, at the time of the institution of this action, was still pending and undetermined in this court.

19th. The plaintiff in this suit, the complainant in the said suit in equity, by reason of his dismissing the defendants in said suit in equity, forever barred himself from calling the said defendants into court again to litigate the subject-matter of the said suit in equity.

20th. The pendency of the appeal on the part of the defendants aforementioned, at the time of the institution of this action, was properly pleaded herein as a matter of abatement in this action.

21st. The pleadings, as they stand on the submission of the demurrer, show that the plaintiff has not the legal title to the real estate which is the subject-matter in controversy in this action; and that judgment on the demurrer should have been in favor of the defendants.

D. A. SECOMBE,

Jan. 30th, 1856. *Att'y for Appellants.*

SUPREME COURT,
Territory of Minnesota, ss:

I, Geo. W. Prescott, clerk of the supreme court above named, certify the foregoing to be a true copy of the defendants' (appellants) points, filed in said court in the cause therein entitled, on the 30th day of January, A. D. 1856, and still on file in said court.

[SEAL.] Witness my hand and seal of court, this 8th day of May, A. D. 1856.

GEO. W. PRESCOTT, *Clerk.*

IN SUPREME COURT,
Territory of Minnesota.

Feb'y 2—January General Term, A. D. 1856—15th day.

FRANKLIN STEELE, respondent,
against
JAMES H. TRADER, D. A. SECOMBE, and others, appellants.

The matters at issue in this cause having been duly considered, it appears to this court that in the proceedings and judgment in the district court of Ramsey county, to this court appealed from, there is no error. It is, therefore, ordered that said judgment be in all things affirmed, with costs to said respondent in this court.

A true record. Attest:

GEO. W. PRESCOTT, *Clerk.*

SUPREME COURT,
Territory of Minnesota.

Appeal from the District Court of Ramsey county.

FRANKLIN STEELE, respondent,
against
DAVID A. SECOMBE, Sumner W. Farnham, Charles F. Stimson, Samuel Estes, Benjamin Parker, John Rollins, Eli C. Jones, E. F. King, J. La Croix, Orville W. Stoughton, Moses W. Getchell, and George B. Dutton, appellants.

An order of court having been made and entered of record in this court, on the second day of February, A. D. 1856, affirming the judgment rendered in the district court of Ramsey county in this cause, and to this court appealed from; now, on motion of Hollinshead & Becker, the respondent's attorneys, it is hereby adjudged that the said respondent above named recover of the appellants above named the sum of one hundred and twelve dollars and fifty cents, amount of judgment for costs in court below, with interest from rendition, and the costs in this court to be taxed and inserted herein.

GEO. W. PRESCOTT, *Clerk.*

Dated Feb'y 5th, 1856.

Costs taxed against appellants after notice, at thirty $\frac{5}{100}$ dollars, this 22nd day of February, A. D. 1856.

G. W. PRESCOTT, *Clerk.*

Costs below in judgment - - - - -	$107 00
Interest from May 31, '55 - - - - -	5 50
	$112 50
Costs in Sup. Court:	
$10, $15, 2 affi'ts 50, clerk's fees 4 55 - - -	30 05
	$142 55

SUPREME COURT,
Territory of Minnesota, ss:

I, Geo. W. Prescott, clerk of the above entitled court, certify the foregoing to be a true transcript of the minutes of court, relating to the cause in the foregoing order entitled, and that said order and the judgment thereon entered as above, and in the foregoing transcript set forth, appear of record in my said clerk's office.

[SEAL.] In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this 8th day of May, A. D. 1856.

GEO. W. PRESCOTT, *Clerk.*

SUPREME COURT, *Minnesota Territory.*

FRANKLIN STEELE, appellee,
against
J. H. TRADER and others, appellants.

And now come the appellants in the above entitled action, and move the said court that the said action be continued, for the following reasons, to wit:

1st. Because the return from the court below was not made to this court until the second day of the present term of this court, and the appellants have not been able to make necessary preparation for the argument by reason thereof.

2d. Because two of the present members of this court, his honor Chief Justice Welch and his honor Associate Justice Chatfield, are by the statutes of this Territory disqualified to sit in this action.

In support of which said motion the said appellants submit the affidavits hereto annexed.

Dated January 21, 1856.

D. A. SECOMBE,
Attorney for Appellants.

SUPREME COURT, *Minnesota Territory.*

FRANKLIN STEELE, appellee,
against
J. H. TRADER, and others, appellants.

RAMSEY COUNTY, *ss:*

David A. Secombe being duly sworn says, that he is one of the appellants and attorney for all of said appellants in the above entitled

action; that the appeal in said action was taken on the 15th day of October, 1855; that said appellants procured the return herein to be made to this court at the earliest day they could; that said return was made as aforesaid not till the second day of the present term of this court; that the appellants had been aware for some time previous to the commencement of this term that the return could not be made until the commencement of the term, and that they could not have the possession of the said return or the records in the court below, in order to prepare paper-books as required by the rules of this court; that therefore, they, said appellants, did not notice the said action for argument for this term, nor did they have any actual notice that the cause had been noticed for argument by the appellee herein, until one day previous to the commencement of this term; and that by reason of the before mentioned circumstances, the said appellants have not been able to make any preparation for the argument of this action; that deponent is the only person who is the authorized attorney for the said appellants, though Judge Cooper has been employed by deponent as counsel herein.

And further deponent saith not, save that he asks that this cause may be continued on the grounds above mentioned.

DAVID A. SECOMBE.

Subscribed and sworn to, this 21st day of January, 1856, before me,

GEO. W. PRESCOTT,
Clerk Sup. Court, M. T.

SUPREME COURT, *Minnesota Territory.*

FRANKLIN STEELE, appellee,
against
TRADER, SECOMBE, and others, appellants.

COUNTY OF RAMSEY, *ss:*

David A. Secombe being duly sworn says, that he is one of the appellants and attorney for all of the appellants in the above entitled cause; that he believes that by the statutes of this Territory neither his honor, the chief justice of this court, nor his honor Associate Justice Chatfield, are qualified to sit in this cause, and gives as his reasons for said belief as follows, to wit:

That both of the said justices of this court have given a decision in this court upon the identical question in issue in this action, to wit, the ownership of the real estate which is the subject of this action, in deciding the appeal pending in this court heretofore between these appellants, as the then appellants, and this appellee, as the then appellee, as by reference to said decision on file in this court, and herein referred to, and for that purpose made a part of this affidavit, will more fully appear. And further deponent saith, that he is informed and verily believes that his honor, Chief Justice Welch, for some time previous to, and at the time of his appointment to his said office, was associated in the practice of the law, if not an actual partner of the firm of Rice,

Hollinshead and Becker, the attorneys of the appellee herein, and subsequently to and at the time that the said firm were the attorneys for the appellee herein, engaged in litigating for said appellee the identical question at issue in this cause, to wit, the appellee's title to the subject-matter of this action.

And further deponent saith, that his honor, Associate Justice Chatfield, as appears by the record in this action, is named as a witness in one of the deeds by virtue of which the appellee herein claims his title to the subject matter in controversy herein.

And further deponent saith not, save that he prays that the said cause may be continued on the grounds herein above mentioned and set forth.

DAVID A. SECOMBE.

Subscribed and sworn to this 21st day of Jan., 1856, before me,

GEO. W. PRESCOTT,
Clerk Sup. Court Min. Ter.

Endorsed: "Supreme court, Minnesota Territory—Franklin Steele, appellee, ag'st D. A. Secombe and others, appellants—Motion for continuance and affidavits for same—Filed and annexed affidavits read to the court at general term, January, 1856, to wit, Jan. 21, 1856—Geo. W. Prescott, clerk—D. A. Secombe, attorney for appellants."

SUPREME COURT, *Minnesota Territory, ss:*

I, Geo. W. Prescott, clerk of the above entitled supreme court, certify the foregoing to be a true copy of the motion and affidavits annexed, and of the endorsement thereon on file in the cause therein entitled in said court.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, this 8th day of May, A. D. 1856.

[SEAL.] GEORGE W. PRESCOTT, *Clerk.*